DOCUMENT RESUME

ED 255 668 CE 041 133

TITLE	Guidelines for Evaluating, Reviewing and Enhancing Employment-Related Services for People with Developmental Disabilities.
INSTITUTION	National Association of Developmental Disabilities Councils, Washington, DC.
SPONS AGENCY	Administration on Developmental Disabilities (DHHS), Washington, D.C.
PUB DATE	1 Mar 85
NOTE	133p.; Portions of attachments are in small print.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC06 Plus Postage.
DESCRIPTORS	Adult Education; *Agency Cooperation; *Developmental Disabilities; Employment Opportunities; *Employment Services; Guidelines; Postsecondary Education; Private Agencies; *Program Evaluation; Public Agencies; Secondary Education; Special Education; State Agencies; Vocational Education; *Vocational Rehabilitation
IDENTIFIERS	Developmental Disabilities Councils

ABSTRACT

These guidelines are designed to assist the State Developmental Disabilities Councils in reviewing and evaluating existing programs and services as well as advocating the filling of gaps and the enhancement and expansion of employment-related services. An introductory section makes recommendations for use of these guidelines and presents some basic strategies for the study and analysis of employment-related services. The seven sections of the manual are organized in a sequence designed to permit the State Developmental Disabilities Councils to (1) review the major programs most directly involved, analyze the issues or assumptions, explore the critical elements, and review the constraints, resolutions, and problems associated with the delivery of employment-related services; (2) examine the prevalence of and potential for cooperative and collaborative agreement among agencies and organizations; (3) analyze the other potential funding sources; (4) evaluate gaps and barriers, incentives, and disincentives influencing and affecting employment-related services; and (5) consider the options and alternatives to existing employment service delivery systems. Following a list of references is a comprehensive array of attachments to provide specific details regarding a program, statute, or policy, including the Education of the Handicapped Act, Job Training Partnership Act, Rehabilitation Act, and Vocational Education Act. (YLB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

4989

Info cc

NADDC

PUBLICATIONS

ED255668

Guidelines for Evaluating, Reviewing and Enhancing Employment-Related Services

March, 1985

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

CE041133

NADDC PUBLICATIONS is a series of materials published to assist State Councils and other members of the Developmental Disabilities community.

National Association of Developmental Disabilities Councils
1234 Massachusetts Ave., N.W., Suite 103, Washington, DC 20005. Tel. 202-347-1234

GUIDELINES FOR EVALUATING, REVIEWING
AND ENHANCING
EMPLOYMENT-RELATED SERVICES
FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

Produced by: NADDC Employment Initiative Project

Project Director: Claude Whitehead
Research Assistant: Sallie Rhodes

March 1, 1985

This publication was made possible through a grant from the Administration on Developmental Disabilities, Office of Human Development Services, U.S. Department of Health and Human Services, project No. 0090DD0069

PREFACE

This material was provided under the direction of the NADDC Employment Initiative Project Advisory Committee though a grant from the Department of Health and Human Services Administration on Developmental Disabilities, project No. 0090DD0069.

Members of the Advisory Committee are:

- Ed Preneta (CT), Chairperson
- Sharon Hansen, (WA)
- Thomas Larkin (MA)
- Susan Parker (NH)
- Gerald Pantaleo (MD)
- Catherine Rowan (NJ)
- Joellen Simmons (TX)
- James Shorter (CA)
- Denis Stoddard (OH)
- Roger Webb (TX)
- Colleen Weick (MN)
- Jayn Wittenmyer (WI)

Liaison members include:

- Curtis Decker (NAPAS)
- Mike Herrell (ED/OSERS)
- William Kierman (UAF)
- Ray Sanchez (DHHS/ADD)

NADDC EIP staff:

- Claude Whitehead, Project Director
- Sallie Rhodes, Research Associate

National Association of Developmental Disabilities Councils
1234 Massachusetts Avenue, N.W., Suite 103
Washington, D.C. 20005
(202) 347-1234

Howard Shapiro, President
Susan Ames-Zierman, Executive Director

Table of Contents

Page

STATEMENT OF GOALS AND OBJECTIVES OF THE ASSESSMENT ACTIVITIES 1

RECOMMENDATIONS FOR USE OF THESE GUIDELINES 1

I. CURRENT SYSTEMS AND PRACTICES OF PUBLIC AND PRIVATE AGENCIES 7
- *General Statement of the Major Issues 7
- *Major Issues Relating to State Rehabilitation Agencies 10
- *Major Issues Relating to Sheltered Workshops and Adult Activities Center 16
- *Issues Involving Job Training Partnership Act Funding 22
- *Issues Involving the State MR/DD Agency 25
- *Issues Involving State and Local Education Agencies 27
- *Issues Involving Governor's Committee on the Disabled 30

II. COOPERATIVE AGREEMENTS -- DESIGN AND IMPLEMENTATION 32
- *Agreements Between State VR and State Special Education/Vocational Education 33
- *Agreements Between State VR and State MR/DD 34
- *Agreements Between State VR and Private Community-Based Facilities 34
- *Agreements Between State MR/DD and Private Community-Based Facilities 35

III. PROGRAM FUNDING FROM TITLES XIX AND XX OF THE SOCIAL SECURITY ACT 37

IV. INDEPENDENT LIVING REHABILITATION SERVICES 38

V. PRIVATE COMMUNITY FUNDING RESOURCES 38

VI. GAPS AND BARRIERS, INCENTIVES AND DISINCENTIVES 40

VII. OPTIONS AND ALTERNATIVES TO EXISTING EMPLOYMENT SERVICE DELIVERY SYSTEM 50

REFERENCES 61

ATTACHMENTS 64

List of Attachments

A) Education of Handicapped Act (P.L. 98-199)

- Section 618 Abstract: Requirement for studies of service needs of handicapped students leaving school

B) Job Training Partnership Act (P.L. 97-300)

- Abstract and description of special provisions for people who are developmentally disabled

C) Rehabilitation Act of 1973 (P.L. 93-112 as Amended by P.L. 95-602)

- Abstract of regulations and definitions
- Abstract of Federal Manual: Client Services

D) Vocational Education Act (P.L. 98-524)

- A Review of the "Carl D. Perkins Vocational Education Act"

E) Synopsis of Waiver Provisions of Social Security Act, Section 1619 (a) and (b)

F) List of Suggested Essential Documents for Review

G) Summary of provisions of Targeted Jobs Tax Credit Program

STATEMENT OF GOALS AND OBJECTIVES
OF THE
ASSESSMENT ACTIVITIES

GOAL STATEMENT

The purpose of the NADDC Employment Initiative Project assessment activities is to promote the employment and advancement in employment of persons with developmental disabilities at the optimum level possible in the most integrated setting appropriate to the individual's skills, needs, and interests. The goal is to assist states to identify and remove barriers, constraints and disincentives to the achievement of optimal employment and to stimulate enhancement and expansion of employment opportunities.

OBJECTIVES

The overall objective is to assess current systems and practices found at the state and local level in public and private agencies and organizations providing training and employment services to persons who are developmentally disabled. These guidelines are designed to assist the State Developmental Disabilities Councils in reviewing and evaluating existing programs and services as well as advocating the filling of gaps and the enhancement and expansion of employment related services.

RECOMMENDATIONS FOR USE OF THESE GUIDELINES

Although these guidelines were initially intended as an assessment tool to evaluate current practices and policies impacting on employment-related services, the final product has been broadened in scope to permit State DD Councils (and other interested organizations) to gain a better understanding of the capacities and constraints facing existing service delivery systems; the options and alternatives for revising the systems; and the opportunities for cooperation, coordination and collaboration.

It is anticipated that this expansion of knowledge will lead to more effective planning, negotiation and facilitation of enhanced employment-related services for persons who are developmentally disabled.

Design of the Guidelines

The sections of this manual are organized in a sequence which should permit the State DD Councils to:

1. Review the major programs most directly involved, analyze the issues or assumptions, explore the critical elements and review the constraints, restrictions and problems associated with the delivery of employment-related services
2. Examine the prevalence of and potential for cooperative and collaborative agreement among agencies and organizations
3. Analyze the other potential funding sources
4. Evaluate gaps and barriers, incentives and disincentives influencing and affecting employment-related services
5. Consider the options and alternatives

In addition, a comprehensive array of attachments has been developed in order to provide State DD Councils with specific details regarding a program, statute or policy.

Use of Materials as Discussion Outlines

In preparing this material it was anticipated that most State DD Councils would establish a special task force or committee which would include representatives of the agencies and organizations involved. Councils should feel free to disseminate this manual in whole or in part for any useful purpose. If additional information regarding citations and sources is desired, the Council should contact NADDC-EIP staff.

Suggested Basic Strategies in Addressing the Issues

State DD Councils are urged to approach the study and analysis of employment-related services as follows:

1. Fundamental Principles:

A. Assume that there is sincere desire on the part of all involved organizations and agencies to enhance and expand employment-related services for persons who are developmentally disabled.

B. Assume that there may be valid reasons for the lack of success by some persons with developmental disabilities in achieving an optimal level of employment. Recognize that there are constraints imposed upon provider and funding agencies including financial and programmatic limitations which seriously hamper provision of services and that certain restrictions may be beyond the control of the involved agency or organization.

C. Acknowledge that some of those agencies now providing services may be meeting most of the perceived needs of adult individuals who are developmentally disabled.

D. Recognize that some persons with developmental disabilities may be content with the level of employment they have reached within the sheltered or otherwise structured environment. But do not assume that they would be unwilling to move into a more integrated employment setting if they understood the benefits which might be realized and were given proper training and support for such a change.

E. Approach the analysis of problems associated with a particular type of organization, agency or resource with a balanced perspective which weighs each possible option carefully and assumes good-faith effort on the part of the respective organization to solve problems under discussion.

F. Review all available written statements of policy, procedure, and plans of the agency or organization involved prior to initiating discussions. Analyze pertinent federal and state statutes and regulations, annual budgets and other relevant documents.

2. State Developmental Disabilities Council Roles

A. The State Council role of facilitator and advocate is especially important. Public and private agencies may be operating in a "peaceful co-existence" mode, purchasing or providing employment-related services for persons who are disabled without addressing the unique long-term service needs of those individuals who are developmentally disabled. The convening of a special task force and/or the identification of specific known (or perceived) problems with the current system is essential to services enhancement.

B. The State DD Council can call the attention of the state legislature to critical barriers and problems involving legislative or funding constraints through the Council activities whereas the State agency involved may be prohibited from such activity.

C. The State Council can work from a position of recognized strength to secure copies of state plans, policy statements, and operating manuals as appropriate.

D. The Council can function as a mediator in disputes which may arise in regard to roles and responsibilities of state or local, public or private agencies.

E. The Council can aid in identifying training and technical assistance needs of provider agencies and can promote the development of programs to address these needs.

Definitions and Terminology

Because this manual is designed for use by State DD Councils, we have assumed that the definitions and terms used in the sections will be familiar to the Council committees or task forces. For example, the term "developmental disability" relates to the functional definition as contained in P.L. 98-527. It should be noted that many of the studies cited in the manual appeared to have used a broader definition of developmental disability and some may have used the term interchangeably with the term "mental retardation." Consequently, persons reviewing the results of projects and studies should exercise caution in interpretation of the findings. The initial response to our Survey of State Council Involvement in Employment-Related Activities (January 1985) shows that there is considerable inconsistency in the use and application of the developmental disability term. For example, Councils stated that about one-sixth of the State VR agencies use the functional definition, one-fifth use the categorical definition and about one-half use a combination of both definitions. The State MR/DD agencies appear more likely to use the categorical definition or a combination of both types -- possibly because that state agency has the primary responsibility for people who are mentally retarded.

Additional confusion in definition is emerging in some states regarding some persons disabled by severe chronic mental illness have been found to meet the functional definition of developmentally disabled. Throughout this manual the designation "MR/DD" has been used to identify the primary state agency administering services to persons who are developmentally disabled. In those states in which developmental disability is considered to include persons with severe chronic mental illness, the MR/DD designation should be changed to MH/MR/DD. Further, we are aware that some MR/DD agencies serve people with mental retardation only.

The other two terms likely to be used interchangeably in the literature are: "rehabilitation" and "habilitation." In a strict interpretation the term rehabilitation relates to "restoring to use or capacity" and the term habilitation concerns the development of capacity. In practice, however, there seems to be little distinction as applied to employment-related services for adults. (Office of Technology Assessment, 1982) The Rehabilitation Act of 1973 as amended by P.L. 95-602 defines rehabilitation services as clearly inclusive of habilitation services likely to be needed, especially in the Title VII section on Comprehensive Rehabilitation Services for Independent Living. We need to be aware, however, that people with developmental disabilities are more likely to need habilitative services to support movement toward employment.

Technical Assistance

Some Councils may need assistance in the use of this material due to the newness of the employment area to Council work. Aid to such Councils will be available in the form of telephonic consultation or electronic mail response and on-site technical assistance through the volunteer efforts of State DD Council members of the NADDC Employment Initiative Project Advisory Committee and project staff. Requests for assistance should be communicated directly to NADDC to the attention of EIP Director, Claude Whitehead.

ACCESS TO EMPLOYMENT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

I. Current Systems and Practices of Public and Private Agencies

General Statement of the Major Issues

Employment in the regular competitive labor market is presumed to be a major goal for all adults but for some persons with developmental disabilities this may be a distant, elusive and sometimes unrealistic expectation. Recent research (Bellamy, et al, 1979; Kiernan and Stark, 1985) shows that if individuals who have developmental disabilities enter the employment market currently, they tend to be limited to gainful employment in a sheltered setting or to work activities at an even more restricted level in an activity center.

The major elements of the issue include lack of mobility and transition, i.e., very few of the persons beginning or entering services in a sheltered employment setting move from that level to competitive employment or even to other advanced forms of supported employment. (DOL, 1979) Also, those persons who have severe disabilities who enter the community services system at the activity center level may remain there indefinitely. Transitioning from segregated settings to integrated settings is almost non-existent in many communities. (DHHS, 1981)

The lack of movement, mobility and transition is attributable to several factors, not the least of which is the absence of incentive or specific funding for competitive job placement on the part of provider organizations. Funding for extended services in activity centers and sheltered workshops (e.g., Title XX) tends to be based on an annual contract involving services which are more directed toward maintaining the individual clients in the center rather than moving them up and out. Programs specificly focused on upward movement are almost non-existent. (DHHS, 1981)

For most adults with severe disabilities there is no entitlement to employment services, and eligibility may permit wide discretion on the part of case managers and counselors. (Hawley and Whitehead, 1981) Whereas Federal guidelines tend to be broad and flexible, state rehabilitation agencies, for example, are permitted to establish eligibility (or acceptance) policies and standards which are substantially more restrictive. Further, the direct service worker (counselor, case worker) may exercise greater selectivity in serving individual clients. (34 CFR: Section 361)

The difficulty in providing services to enhance upward mobility and transition of individuals with disabilities also relates to the time-limited involvement of state rehabilitation agency support for evaluation and training services leading to employment. (Marrone and Whitehead, 1985) State VR agencies tend to be evaluated on the basis of numbers of persons rehabilitated and placed into gainful employment (HEW/RSA, 1979) but the client must reach that goal within time constraints which are imposed by State VR case service fund limitations or other State VR agency policy. These time constraints vary widely and are influenced by provider agency capability, counselor perception of the client needs and other considerations. In essence the State VR agency does not have the financial resources to support indefinite services. Thus, the time limitation may expire before some individuals with disabilities reach their maximum (or optimum) employment potential, and their VR supported services may be terminated at the sheltered employment level. (Marrone, 1984) This problem becomes especially critical for persons with developmental disabilities who require a longer period of training and need extended services. In several states services are extended through state appropriation and/or through other Federal and state funding combinations (e.g., Title XX and state appropriations). Unfortunately, such supplemental service programs often provide for the continuation of services rather than for the transitioning of the individual to non-supported employment.

A potential answer to the need for extended funding for employment-related services is contained in the 1978 amendments to the Rehabilitation Act (P.L. 95-602), Title VII Independent Living Rehabilitation Services, which authorizes grants (supplementary to vocational rehabilitation services under Title I of the Rehabilitation Act) "to assist states in providing comprehensive services for independent living..." The program is designed for persons who have severe impairments and for whom services are likely to be more costly and of greater duration than those vocational rehabilitation services usually required or provided. While the focus is on helping such persons live and function independently, services can be provided to assist individuals with handicaps to secure and maintain appropriate employment. Unfortunately, there has been no appropriation for the Part A Comprehensive Services Program to date. Hopefully the Title VII Part A program will be funded sufficiently in future years to permit service delivery.

Access to employment opportunities for persons with developmental disabilities also is hampered by problems of coordination between state agencies. The state rehabilitation agency administers the vocational rehabilitation program on a time-limited basis as previously noted. The state mental retardation/developmental disabilities agency administers a broad array of services on an extended (sometimes lifetime) basis but tends to expect the state VR agency to provide employment-related services. Although a few state legislatures (North Carolina, New York, New Jersey, Washington) have given broad authority to the State MR/DD agency to include the provision of vocational rehabilitation services, the trend seems to be more toward supplementing the state VR agency services on a very limited scale. (NJDMR, 1984) In an increasing number of states state-funded adult activity centers seem to be shifting toward work programs rather than focus exclusively on socio-recreational therapeutic activities. (NASMRD Conference, 1984)

The growing advocacy for employment in an integrated setting evolves from concern that persons served in the segregated environment of a sheltered workshop or an adult activity center may develop a faulty employment concept without the role model of a non-handicapped worker. (OSERS, 1984) However, the movement toward competitive integrated employment in the community is often resisted by some parents who are concerned about the security, stability and safety which is provided in the community-based sheltered setting and may not be available in an integrated community employment environment. (Whitehead, 1979; Hill, 1984)

An additional factor in achieving a maximum level of integrated employment is the threat of loss of assistance and benefits provided to disabled persons under Titles II (Disability Insurance) and XVI (Supplemental Security Income) of the Social Security Act. (DOL, 1979; DHHS, 1981) By restricting earned income below the Substantial Gainful Activity determiner, individuals will be able to continue receiving cash assistance and benefits as well as health and social services benefits. Movement into competitive employment at hourly wages of more than 50 percent of the statutory minimum wage rate likely would cause the individual to lose eligibility for Supplemental Security Income or Social Security Disability Insurance benefits, including Medicaid and Medicare.

Major Issues Relating to State Rehabilitation Agency Programs

Background:

The Rehabilitation Act of 1973 (PL 93-112) as amended by PL 95-602 represents the major funding source for employment-related services. State rehabilitation agencies are provided Federal funds representing 80 percent of the total cost with which to operate a vocational rehabilitation program. However, some states provide more than the 20 percent matching funds required by Federal statute in order to expand the basic state services program and/or support special activities. States contract with the Federal government through the Rehabilitation Services Administration (Department of Education) in the form of a written detailed document, the State Plan for Vocational Rehabilitation Services. State VR agencies are both direct service providers and purchasers of services. Sheltered workshops and other rehabilitation facilities provide rehabilitation services to persons with disabilities under a fee for service or annual agreement with the State VR agency. Most of the rehabilitation services purchased for individuals with developmental disabilities in sheltered workshops are limited to vocational evaluation and work adjustment training. (DOL, 1979; DHHS, 1981)

The State VR agencies were mandated to give priority to persons with severe disabilities by 1973 Amendments to the Rehabilitation Act (P.L. 93-112). This group included persons who have developmental disabilities. (34 CFR: Section 361.1) Clients with severe disabilities accounted for 51 percent of the State VR caseload in 1980. (USDE/OSERS, 1981)

While it is not possible to determine the exact representation of persons who have developmental disabilities (as defined in P.L. 98-527) in the "severely disabled" caseload, it is necessary to acknowledge the effort of many State VR agencies to serve this population. Review of the State VR agency performance by State DD Councils should take into consideration the problems which State VR agencies face in attempting to address the array of needs characteristic of persons with developmental disabilities. These include inadequate Federal and State funding and the lack of suitable resources in the community.

The stated assumptions represent issues reported from a variety of national and state agencies and organizations and identified in research and other studies. The problems may not be universal. Each state should make its own determination as to whether the particular issues apply in that state.

Assumptions:

A. Some persons with developmental disabilities cannot get into the rehabilitation/habilitation services system. They often are deemed by the State VR agency as "unable to benefit from the provision of vocational rehabilitation services." (Kiernan, et al, 1985)

Comment: Rehabilitation Act (P.L. 93-112 as Amended) sets broad standards of eligibility but States have authority to establish stricter eligibility (or feasibility) standards. Such state standards tend to limit access to services for persons with developmental disabilities. (34 CFR: Section 361.31)

Explore:

1. State VR Plan content regarding order of acceptance for services and provision for expanding and improving services for individuals who have severe handicaps.
2. definition of "severe handicap" used and definition of developmental disability used (if any).
3. state performance records pertaining to action taken on persons referred for service.

B. It has been reported that a limited number of adults who have developmental disabilities are served by State VR agencies. (HEW/RSA, 1978)

Comments: Persons who have developmental disabilities can apply for services and encounter rejection or they are discouraged from applying by the prospect of being rejected.

Explore:

1. waiting lists of local VR agency offices. Are persons with developmental disabilities waiting to be served?
2. outreach and referral activities of State VR agency.
    a) Where do the majority of referrals originate?
    b) Does State MR/DD agency make referrals? If so, are referrals made routinely or only for those clients who are highest functioning
    c) How does a person with a developmental disability get referred to the State VR agency?
    d) What role does the Client Assistance Program play?

C. Persons with developmental disabilities tend to have a higher than average rate of rejection following diagnostic study. (HEW/RSA Statistical Data, 1978)

Comment: Rehabilitation Act provides for a preliminary diagnostic study and for a thorough diagnostic study. Clients may be rejected following the preliminary diagnostic study. If there is a question as to their feasibility for vocational rehabilitation services there is provision for extended evaluation services.

Explore:

1. reasons stated in client file for rejection.
2. evidence that rejection was discussed with client and his/her representative.
3. use of especially qualified person(s) in diagnosis of developmental disabilities.
4. use of extended evaluation.

D. Persons with developmental disabilities are routinely referred to sheltered workshops for evaluation and training--rather than to evaluation clinics, trade and technical schools or to on-the-job evaluation and training programs. (DOL, 1979) It is assumed that equal access to suitable services will be provided.

Comment: Channeling to sheltered workshops for services severely limits training and employment opportunity and, therefore, may not be appropriate for some persons with developmental disabilities.

Explore:

1. availability of other more suitable and appropriate alternative service sources.
2. skills of counselor or case manager in assessing needs and potentials of persons with developmental disabilities.
3. use of Individualized Written Rehabilitation Plan in prescribing services.

E. Persons with developmental disabilities are routinely "closed as rehabilitated" when placed in sheltered employment and VR support of services is discontinued. (HHS, 1981)

Comment: State VR agency has job development and job placement responsibilities prescribed by the Rehabilitation Act. Failure to place the client into competitive employment reflects either a lack of employment opportunities, an inability of the client to qualify for a competitive employment job, or an unsuccessful effort by State VR agency staff to identify and develop job opportunities. State VR counselor is required to followup at least annually clients placed in extended sheltered employment. (34 CFR: Section 361.58)

Explore:

1. State VR agency job development/placement program and its appropriateness to the capabilities of persons who have developmental disabilities.
2. lack of information available to State VR counselors and casemanagers regarding the potentials of persons who have developmental disabilities.
3. adequacy of job preparation program(s) of service provider agency and/or State VR agency.
4. state agency practices in annually following up clients placed in sheltered employment.

F. State VR agency is unable to provide separate, specific data regarding the number of persons who have developmental disabilities who are accepted, served, rejected, and whose cases are closed as rehabilitated (gainfully employed).

Comment: State VR agency aggregates data on services to people with disabilities persons with separate identification of "severely disabled" (as defined in their State Plan). Reports are provided to the administering state department, to the state legislature and the governor, and to the Federal Rehabilitation Services Administration.

Explore:

1. State VR agency reports and accountability. Examine reports to State legislature and governor. Determine availability of unpublished data regarding specific disability groups/categories and outcome or other status.
2. possibility of State VR agency action to refine data system to provide separate reporting of services to persons who have developmental disabilities. Investigate feasibility of using the functional impairment definition and offer assistance.
3. specific disability definitions contained in VR State Case Service Manuals to explore possibility of grouping currently used definitions to determine extent of service to clients who have developmental disabilities.

G. Some state VR agencies have been unable or unwilling to provide special services to accommodate the complex continuing needs of persons with developmental disabilities.

Comment: State VR agency has authority to establish targeted programs for special needs clients under the Waiver of Statewideness provision (34 CFR: 361.12) and the Rehabilitation Services to Groups of Handicapped Individuals provision (34 CFR: 361.55). Agency also can request or propose special funding for certain individuals or groups but such funding may not be available, or there may be other constraints.

Explore:

1. existence of special programs and projects unit.
2. state studies and evaluations - to determine if special needs were identified and State DD Council had opportunity to comment on studies or make recommendations.
3. availability of discretionary funds, also did State VR agency request special funds.

H. Persons with developmental disabilities are sometimes denied services or rejected for services presumably because they were unable to persuade the counselor of their need, interest, and capability. The parent, guardian or other representative may not be able to intervene on behalf of the client.

Comment: The Rehabilitation Act requires representation on behalf of such individuals in the development of an Individualized Written Rehabilitation Plan, when services are denied and in subsequent appeal action. (34 CFR: 361.32)

Explore:

1. evidence of participation of parent or other representative as contained in the individual's file or documented evidence of effort to involve representative.
2. communication with the individual and parent or other representative to advise of right to assistance.
3. written statement of reasons for denial of services.

I. On occasion services to persons with developmental disabilities are either not available, are delayed, or are discontinued prematurely and such action is attributed to lack of case services funds, exhaustion of case services funds or to cutbacks in funds occuring during the operating year.

Comment: State VR agencies operate with formula-based allocations of Federal funds and state appropriated dollars (matching funds). Such Federal funds are subject to Congressional appropriation and often entail problems including delays in budget action. Also state legislative appropriation action sometimes encounters delays and funding cutbacks. Unfortunately the

> case services portion of the state operating budget is primarily the component flexible enough to absorb reductions. The individual with a disability sustains the loss in services. No legal protection is afforded in most states. The budget shortages must be absorbed by the case services allocation when funding levels fall short of the amount required to cover annual increases in administrative costs. (USDE/OSERS, 1981)

Explore:

1. existence of annual contracts between State VR and provider organizations (to assure guarantee of purchase of services and/or a level of funding).
2. state policies on fund reduction action. Provision for equity in fund cutbacks should be described in funding plan of agency and department. (Note: This is a goal rather than a statutory requirement.)

Major Issues Relating to Sheltered Workshops and Adult Activities Centers

Background:

Persons with developmental disabilities are most likely to be provided employment-related services in a community-based private nonprofit facility rather than in a vocational trade or technical school. (DHHS, 1981) For those individuals able to secure sponsorship from the State VR agency, the facility is nearly always identified as a sheltered workshop (alternate term-vocational rehabilitation facility). For those individuals unable to access the State VR system, services are most likely delivered in an adult activity center or a developmental center with sponsorship of the State MR/DD agency.

Although the scope of services may vary widely, states are often unclear in their definitions of these basic types of facilities. In an effort to clarify the differences, the following definitions have been developed (NARI, 1976).

activity center: a community-based facility that provides purposeful work, social, developmental, and recreational programs for adults with severe handicaps, regardless of their productivity. The work is likely to be of a pre-vocational type.

developmental center: a community-based facility which provides activity, training, therapy and care designed to help people with developmental disabilities learn the skills of everyday living; may be for preschool children, school children, or adults.

sheltered workshop: work-oriented rehabilitation facility with a controlled environment, which uses work experience and related services to assist the individual with a handicap progress toward independent living and a productive vocational status.

work activities center: a sheltered workshop, or physically separated department of a workshop, having a planned, identifiable program designed for workers whose physical or mental impairments are so severe as to make their production inconsequential. (This type of workshop is the most common program providing employment-related services for persons with developmental disabilities because of its flexibility.)

These community based facilities usually represent the major service providers for persons with developmental disabilities. Whereas the sheltered workshops (including work activities centers) focus mostly on employment related services, the adult day care centers are more likely to provide non-vocational, social-developmental services. In recent years, many of the adult day care programs have expanded their scope of activities to include work activities in their program. Some sheltered workshops programs include non-vocational, social developmental services and pre-vocational services.

It has been noted that sheltered workshops have been criticized because of low wage payments and limited movement of clients from the workshop into competitive employment. Several national studies (DOL, 1977, 1979; DHHS, 1981; GAO, 1980, 1981) have been conducted along with Congressionally mandated investigations. The findings showed major problems in terms of disincentives, inadequate funding, lack of suitable work supply and insufficient business management experties. Reforms are being addressed by several agencies at the national and state level including the DOL Advisory Committee on Sheltered Workshops, the DHHS Task Force on Training and Employment Services, the DOE Task Force on Rehabilitation Facilities and the California State Council on Developmental Disabilities.

A shift from sheltered employment in a segregated setting to supported employment in an integrated setting is being promoted at the Federal level through the Developmental Disabilities Act of 1984 (PL 98-527) and through priorities adopted by the DHHS Administration on Developmental Disabilities and the Education Department Office of Special Education and Rehabilitation Services. Also, increased effort is being made to access funds for competitive employment placement through the local Private Industry Councils using JTPA funds.

In reviewing the performance of sheltered workshops it is important to recognize the fiscal and programmatic constraints and other problems faced by these private nonprofit, voluntary facilities. Studies conducted by DOL and DHHS (DOL, 1977, 1979; DHHS, 1981) showed that these facilities have no central source of funding or coordination and in fact, operate as independent vendors of employment-related services. As community agencies, they often attempt to meet the needs of all persons who have severe disabilities, especially those who need structured, sheltered assistance. Some sheltered workshops offer a wide array of services including transitional employment services. But because funding for transitional services, including competitive job placement, is not widely available, relatively few workshops are able to operate a sustained program of transitional services. Other barriers faced by the workshops include disincentives contained in the Social Security Act.

The assumptions stated in this section are considered by many authorities to be fairly widespread but they may not represent issues in your state. Also the local workshop may be willing to make program changes and respond to the needs of people who have developmental disabilities more appropriately if funding support can be developed.

Assumptions:

A. Adult activity programs and sheltered workshop programs tend to limit upward mobility for persons who have severe disabilities. Average placement of people into competitive employment is less than ten percent annually for sheltered workshops and almost non-existent for adult day programs. (DOL, 1979; DHHS, 1981)

Comment: Services in adult day care are funded under contract with (or are operated by) the State MR/DD agency and employment (rehabilitation) services in sheltered workshops are mostly funded under purchase of service agreements by the State VR agency. Both state agencies are required to establish standards under which services will be provided. If individuals are transitioned from the center, the sponsoring agency has the capacity to make referrals of new clients to fill the service "slots" vacated in the placement.

Explore:

1. requirements contained in purchase of service contracts or fee agreements for movement, upward mobility, progressive services or sequencing of services including job placement.
2. special incentives for outside placement of clients or disincentives to move clients to other settings
3. existence of working interagency agreements involving out-placement including competitive job placement; or referral, as appropriate, to agency responsible for job placement
4. policy of state MR agency regarding provision for reservation (holding) of service slots in the event of job tryout not being successful
5. availability of funding support for job development and placement services

B. Wage payments by the sheltered workshops to workers who have handicaps are often considered to be relatively low and inadequate for achieving a reasonable level of economic independence. (DOL, 1979; Bellamy, 1984)

Comment: Wage payments are regulated by Federal law if production and sales of commodities and services involves interstate commerce--virtually all sheltered workshops are covered by the Fair Labor Standards Act (P.L. 89-601). Many states also have state minimum wage laws. These Federal and state laws permit payment of hourly wages which are less than minimums established by statute on the premise that the individual who has a disability has an employment productivity impairment which prevents him/her from performing at the level of a non-handicapped worker doing essentially similar work. Thus, an individual who has a severe handicap is often exempt from the minimum wage payment requirement. However, the Federal statute requires wage payments that are commensurate with the productivity of the worker who is disabled in comparison with that of a non-handicapped worker. (29 CFR: Part 525)

Explore:

1. methods used to establish wage payment rates for workers who have disabilities. Review the use of time studies and the availability of applicable prevailing wage rate data.
2. existence of appropriate, applicable certificates from U.S. Department of Labor (or State DOL) to authorize subminimum wage payment.
3. experience and results of any investigations which may have been made by Federal or State officials concerning the facility's compliance with wage and hour requirements.

C. Some sheltered workshops may not provide specific job placement assistance to individuals due to the lack of funding for such services. (DOL, 1979) The refusal or inability of State VR agencies to allow inclusion of job placement staff expense in cost reimbursement or cost determinations in establishing fees or purchase of services contracts for sheltered workshops is frequently cited as a barrier. The inability of the workshop to secure job placement services funding from other sources is a related problem. (DHHS, 1981)

Comment: The Rehabilitation Act authorizes State VR agencies to purchase rehabilitation services including job placement from third parties such as sheltered workshops (34 CFR: 361.42). The State VR agency has the option of purchasing or providing rehabilitation services. Also standards used by the Commission on Accreditation of Rehabilitation Facilities, a nationally recognized accrediting organization, requires that rehabilitation facilities (including sheltered workshops) operate job placement programs. (CARF, 1984) Further, the Job Training Partnership Act provides funds for training and job placement through local Private Industry Councils. (P.L. 97-300)

Explore:

1. policies of State VR agency regarding exclusive or shared responsibility for job placement. Does the state allow job placement expense for sheltered workshops?
2. evidence of effort of the workshop to establish a job placement program. Does the workshop see that role as its responsibility? Is it receiving funds to fulfill that role?
3. involvement of workshop staff in the local (JTPA) Private Industry Council as council member and/or as participant in PIC meetings.
4. representation of private business and industry on the sheltered workshop corporate board of directors or advisory committee.
5. expertise of the facility staff in establishing innovative programs of off-site job stations and employment operations.

D. Financial problems of operating sheltered workshops tend to restrict and limit the scope of services of the facility. The lack of funds often hampers payment of reasonable salaries and wages, program development and provision of vital services. (DHHS, 1981)

Comment: Operating funds for private sheltered workshops typically are derived from a variety of sources for an array of services. (DOL, 1977) Most common sources include income earned from the sale of commodities and services produced by workshop workers (the major source), income from fees and contracts for rehabilitation services, gifts and grants from private and public community sources, and income from special fund-raising activities. Funding levels are dependent upon the workshop administration's ability to market the services and needs of the facility, the level of commitment of the community (including private business and industry), and the perceived role of the facility in serving people with disabilities.

Explore:

1. annual operating budget of the facility (providing details of sources of income and expenses). Is a diversification of funding sources indicated?
2. understanding of facility board of directors of the needs of the clients.
3. evidence of fund development activities including capital for program enhancement, equipment purchase, and building improvement.
4. policies and practices of facility administration in responding to deficits, funding cutbacks and other fiscal crises.
5. impact of fund restrictions and cutbacks on employment of workers who have handicaps.
6. accountability of facility to community. Does it publish annual reports which provide service and financial data?

Issues Involving Job Training Partnership Act (JTPA) Funding

Background:

The JTPA is the successor legislation to the Comprehensive Employment and Training Act in 1982 to fund training and employment services. (P.L. 97-300) The act grants greater power to the local Private Industry Councils (PIC) and also specifically provides for participation by state and private rehabilitation agencies in the planning process. Varying degrees of success have been reported in accessing the JTPA funds allocated by the PIC's for employment-related services for persons with disabilities. Reports from Private Industry Councils indicate that they think that they included people with developmental disabilities in their programs (PCEH, 1984) but may have used the broad categorical definition which could have included many higher functioning individuals who did not meet the functional definition.

The special provisions of JTPA which have relevance for persons with developmental disabilities include authority for waivers of certain requirements for difficult to serve populations and the exempting of family income in determining economic need. These provisions are summarized in Attachment B.

The JTPA also contained authorization for continuation of the U.S. Employment Services which maintains some 2000 State Employment Services (SES) offices throughout the country. Each office is required by the Act to assign at least one staff member to provide people with disabilities with special employment assistance such as evaluation, counseling, job development, training programs and job referrals (USDOL Employment and Training Administration). Some SES offices are linked with state and/or national job banks which represent a computerized listing of job opportunities. The level and extent of services provided to persons who have developmental disabilities could not be determined but the State DD Councils should be aware of this potential resource.

Assumptions:

A. Planning activities of the State Job Training Coordinating Council and local Private Industry Councils often do not consider the needs of persons with developmental disabilities because most of the planning uses data from the unemployment lists of the State Employment Services program. These lists do not include most of the individuals with developmental disabilities because they have never been employed. (DOL, 1979) Also the PIC units often depend upon program proposals solicited on a very restricted basis which exclude private and public rehabilitation organizations -- there is limited announcement regarding availability of training and employment project funds. The end result is that few of the persons who have developmental disabilities receive the benefits of JTPA funding. (PCEH, 1984)

Comment: Appointments to the State Job Training Coordinating Council and local Private Industry Councils are made from a variety of sources and representation of individuals with handicaps is provided for in JTPA. Representatives of rehabilitation organizations especially rehabilitation facilities (sheltered workshops) have been successful in being appointed to the councils in numerous communities and states. (PCEH, 1984)

Explore:

1. composition of membership in State Job Training Coordination Councils and local Private Industry Councils. Is there a representative of people who have disabilities and does that person have an adequate understanding of the unique needs, capacities and capabilities of persons with developmental disabilities?
2. content of annual Job Training Plan of each local Private Industry Council to determine level and extent of provision for projects serving people with developmental disabilities. Does the Plan establish standards to accommodate the needs of persons with developmental disabilities?
3. record of PIC in announcing availability of project funds, reponse and action taken on project proposals involving services to persons who have disabilities.
4. evidence that public or private rehabilitation organizations submitted project proposals to the local PIC.
5. extent of use of JTPA waiver provisions to accommodate special needs of persons with developmental disabilities, e.g., extension of time limitations or fund restrictions on supportive services. Has the State Council or the local PIC exercised its options to assist persons with developmental disabilities?
6. indications that State MR/DD agency developed or attempted to submit project proposals.
7. extent of State VR agency involvement in JTPA funding at state or local level.
8. extent of State Vocational Education agency use of JTPA funding.
9. allocations of state or governor's discretionary funds for

special projects serving persons who have disabilities.

10. extent and effectiveness of consumer organizations in obtaining allocations and projects aiding persons who have disabilities.

Issues Involving The State MR/DD Program

Background:

A mandate for services to individuals who have mental retardation exists in many states. The state agencies for Mental Retardation are charged with implementing these mandates. In a few states this responsibility may be assigned to a broader agency e.g., the Department or Division on Developmentaly Disabilities or the Department of Mental Health and Mental Retardation. In most states there exists some agency (or agencies) charged with providing or coordinating services to persons with developmental disabilities. State plans of DD Councils indicate that there is no common definition of developmental disability used by these agencies. While this lack of agreement in terminology causes confusion in evaluating level of services, it appears that the major problem may lie in counting higher functioning persons as developmentally disabled when they do not meet the functional definition of developmental disability contained in P.L. 98-527.

The essential concern here is the involvement of the State MR/DD agency in employment-related activities (ERA). Historically, the State MR/DD agency has relied upon the State VR agency to provide employment-related services to persons who have developmental disabilities and otherwise served by the State MR/DD agency. In recent years as the deinstitutionalization of persons with mental disabilities progressed and larger numbers of persons with severe disabilities were returned to the community, the State VR agency in many states became unable and/or unwilling to try to meet the employment-related needs of the expanding population. The conflict evolved around two issues: (1) the severity of disability and the limited potential for gainful employment of the individual and (2) the need of the individual for extended and continuing services from an agency (State VR) providing mostly time-limited services (and operating with a restricted case services budget).

As State MR/DD agencies experienced higher rates of rejection of their clients by the State VR agency (HEW, 1979), a few states, including

Pennsylvania, New York, Illinois, Michigan, Washington and New Jersey, moved to fill the gap by establishing a somewhat parallel employment-related service system for their clients. However, many State MR/DD agencies limited their support to the operation of adult activity center programs since these individuals were considered incapable of gainful employment activity -- at least by State VR agency standards.

Recently there has been significant reassessment of this action. Some of the State MR/DD agencies (mentioned above) are introducing work components into the adult activity center program and a few State MR/DD agencies have directed some of their funding resources toward extended sheltered employment services. In addition, a limited number of State MR/DD agencies are funding projects to place people in jobs in the competitive labor market either in supported employment or through direct job placement. Information pertaining to these innovative programs will be collected, analyzed and disseminated by the NADDC Employment Initiative Project staff in the immediate future.

Assumptions:

A. Some State MR/DD agencies either do not include employment-related services in their program or restrict involvement to work activities in their adult day care programs. If the individual who has a developmental disability is rejected for employment-related services by the State VR agency, they have no alternative but the day activity center (DAC). There is very little opportunity for upward movement in the DAC, i.e., not much chance of being transitioned to a program with better employment opportunity. (Dittrich, 1975)

Comment: Most State MR/DD agencies operate under some form of mandate to serve persons who have mental retardation (which may or may not include developmental disabilities). However, operating authority may prohibit the provision of vocational rehabilitation services because the State VR agency is legislatively designated to provide that service (non-duplication of services). The State MR/DD agency does have authority to provide supportive services to eligible individuals and such services could be provided in conjunction with employment-related services provided by another agency (e.g., State VR).

Explore:

1. compliance of the State MR/DD agency in regard to the most appropriate and least restrictive environment requirements of the DD Bill of Rights provisions of P.L. 95-602. (Note that the issue of rights is still unclear.)
2. access of State MR/DD agency to discretionary funds for adult services which might be used to fund extended employment-related services in the community -- both sheltered employment and supported employment.
3. use (application) of Title XIX Community Care Waiver funds and potential for developing joint funding projects involving employment-related services as part of a comprehensive program for clients. Is there a method of combining Title XIX with other funds to avoid audit exceptions?
4. experience of State MR/DD in developing joint employment-related services projects with State VR. Has there been an attempt to establish extended support programs or has the joint effort been limited to short-term, transitional services?
5. experience of State MR/DD agency in linking Special Education and Vocational Education services through cooperative agreements.

Issues Involving State/Local Education Agencies

Background:

The Education for All Handicapped Children Act (PL 94-142) was designed as an entitlement program to assure access to free and appropriate education. As the first decade of experience under the entitlement concludes increasingly large numbers of disabled students are leaving school but are unable to enter the employment market. This group is moving from an organized array of services (to which they are entitled) to the community in which fragmented services with varying levels of eligibility exist. (ED/OSERS, 1984) For students who have developmental disabilities, the school curriculum is more likely to be focused on a non-vocational objective presumably because they were not considered feasible for (capable of) engaging in gainful employment.

In addition to the P.L. 94-142 provision, the Vocational Education Act of 1968 contained provisions to earmark ten (10) percent of the Federal allocation to states for special programs for handicapped students (P.L. 90-576). The recently enacted amendments (P.L. 98-524) included even stronger requirements. Reports on the use of Vocational Education funds indicate that programs for students who have handicaps may not have included accommodations for those who have developmental disabilities. (Report of National Advisory Committee on Vocational Education, 1983)

Both Federal programs have the potential for aiding students with developmental disabilities in preparing for the world of work. Federal funds are provided to the Local School Districts for this purpose but the initiative for developing the program lies with the Local School District (LSD).

The State Rehabilitation Agency is authorized to serve the "school leavers" who have disabilities as well as those needing to transition from school to work.

Assumptions:

A. Because students who have developmental disabilities have severe, chronic impairments, they often are restricted to non-vocational programs in the school curriculum and, consequently, do not have access to school services such as career counseling and job placement assistance.

Explore:

1. supportive services available to students with developmental disabilities. Is there evidence of employment-related instruction being provided on a group or individual basis?
2. special accommodations provided (available) to students who have developmental disabilities, e.g., curriculum revision, special tutoring, use of teacher aide, physical accommodations (equipment and facilities modification), and assistive devices (hearing, speech, vision).

B. Students who have developmental disabilities often do not have access to community work-study programs to assist them in the transition from school to work.

Explore:

1. eligibility (entrance) requirements for the school-operated program of work-study.
2. use of community business and industry work sites for school students. Can the sites accommodate the special needs for job coaching and follow-along services?

C. Some students who have developmental disabilities have access to employment-related services but such services tend to be restricted to sheltered workshops as an optional eduction program. In some communities the education/employment-related services are provided on a part-time or half day basis while in other communities the students attend the workshop full-time. The design of the program and the monitoring and reporting on services provided vary widely from community to community, state to state, and by community facility (workshop) utilized.

Explore:

1. school policies at local education agency level regarding provision of work-study programs, utilization of community-based rehabilitation facilities (sheltered workshops) as optional education service provider.
2. involvement of optional service provider agencies in the development of Individualized Education Plan (IEP).
3. compliance of local school district with requirement for providing basic education and physical education services to those involved in optional education services.
4. practices of local school staff in monitoring services provided in community-based rehabilitation facilities.
5. state statutes regarding ages of eligibility for special education.

Issues Involving the Governor's Committee on Disabled

Background:

The Governor's Committee on the Disabled had its origin in most states as the Governor's Committee on Employment of the Handicapped. The state committee was linked with the President's Committee on Employment of the Handicapped and both functioned to promote employment through public relations, education, legislative support and advocacy. This effort was expanded during the last decade following the 1977 White House Conference on Handicapped Individuals and the 1981 International Year of Disabled Persons to include a wide array of issues and concerns of people with disabilities.

The scope of activities (and influence) of the Governor's Committee varies widely from state to state but most programs give special attention to employment-related activities. However, because the committees tend to be constituted mostly of persons who are not mentally disabled and who are capable of a level of self-advocacy, the activities of the committee are often concentrated on the concerns and issues of persons with physical disabilities.

The program of information and referral, legislative action and public awareness could be of benefit to persons with developmental disabilities. Also, the Governor's Committee is more likely than the DD Council to have linkages with private business and industry -- an important connection in promoting employment.

Assumptions:

A. The Governor's Committee is sometimes perceived as a counterbalance to the State DD Council, i.e., serving that population not the focus of the DD Council's planning and advocacy activities. This distinction varies from state to state but needs addressing when there is overlapping and duplication of effort.

Comment: The State DD Council and the Governor's Committee on the Disabled are appointed by the Governor and have similar missions and purposes. The basic distinction lies in the additional responsibilities contained in the Federal mandate for the State DD Council as compared with the voluntary status of the Governor's Committee. Often the Governor's Committee membership is determined by the Governor or a State body whereas the DD Council membership is defined and allocated by the Federal statute (the Developmental Disabilities Act). Both groups include consumers in their memberships. The two groups are motivated to cooperate with each other by the common interest in serving the needs and interest of disabled people.

Explore:

1. possibilities for joint planning as well as for the incorporation of unique needs and interests of each group into the others' planning and advocacy activities.
2. composition of the membership of the two groups. Is there formal interface through liaison representatives?
3. role and function of sub-state regional or local offices. Are needs and interests of persons with developmental disabilities represented?

B. Some Governor's Committees on the Disabled have greater discretion than State DD Councils in legislative activities, public education and promotion and through cooperative effort. State DD Councils can increase their influence in these areas.

Comment: The composition of the Governor's Committee should be representative of all persons with disabilities.

Explore:

1. method of selecting members for the committee.
2. efforts of consumer groups concerned with persons who have developmental disabilities to secure representation on the Committee, and evidence of representatives' active participation in Committee functions.

II. Cooperative Agreements -- Design and Implementation

The need of persons with developmental disabilities for a wide array of services on a continuing basis cuts across the lines of authority and responsiblity of several agencies both public and private. For example, the provision of employment-related services to a student leaving school and attempting to enter the employment market could involve local school special education and vocational education, the local office of the State vocational rehabilitation agency and the private rehabilitation facility (sheltered workshop). This is especially true when the individual with a develomental disability has not had full access to vocational training and career planning assistance in the school system.

An adult with a severe disability being transferred to the community from a state institution likely would require referral and case management services from the State MR/DD agency, assistance in developing independent living skills from a DMR/DD funded community facility and employment-related services from a private sheltered workshop.

Cooperative agreements are intended to formalize in writing the roles and responsibilities of two or more parties involved in the delivery of services, including funding commitments. Too often interagency cooperative agreements represent an agreement to cooperate without containing the specificity necessary to make the agreement effective. The agreements tend to be negotiated at the state administrative level and not communicated adequately to the local service delivery level. (Mideast Regional Resource Center, 1979; DHEW, Office of Education, 1979)

Essential elements of an interagency cooperative agreement should include the following:

- definition of the target population, i.e., describing the characteristics of persons with developmental disabilities
- descriptions of services to be provided as the exclusive responsibility of each respective cooperating agency
- descriptions of service responsibilities to be shared and the conditions of the sharing
- listing of commitments of staff, housing, equipment, funds

and other resources
- descriptions of goals, objectives and performance measures for the cooperative activities, including data to be developed and reported
- identification of Federal and State laws applicable to the service delivery, listing the requirements and restrictions of each statute
- designation of lead agency, especially for case management

The most important parties to cooperative agreements involving employment-related services for persons who have developmental disabilities would seem to be: the State Rehabilitation Agency, the State Mental Retardation/DD Agency, the State Special Education Agency, the State Vocational Education Agency, the State Employment Services, and private community-based facilities (sheltered workshops, developmental centers, adult activity centers).

Cooperative agreements most often are made between two parties but because of the array of services needed by persons who have disabilities consideration should be given to developing a three (or four) party agreement.

The unique features of cooperative agreements among specific agencies are described below:

Cooperative Agreements Between State VR and State Special Education/Vocational Education

Design of the agreement should give special attention to:

A. point of intervention of State VR agency counselor/case manager (allowing time for transitional services development)
B. student records and case information to be shared with State VR staff
C. definition of post-school services (including follow-along) to be provided as well as description of curriculum related to vocational development to be provided
D. provision for development of Individual Transition Plan to reflect items described above
E. documentation and affirmation of compliance with mandates for cooperation

contained in applicable Federal statutes: Education for All Handicapped Children, Vocational Education Act, Developmental Disabilities Act, and Rehabilitation Act.

Cooperative Agreements Between State VR and State MR/DD

Development (or modification) of this agreement should focus on:

A. responsibility for determination of acceptance of referrals of persons with developmental disabilities from DMR/DD to VR: elements of eligibility and feasibility, defining minimum functional capability requirements, establishing final authority/responsibility for acceptance decision.
B. description of employment-related services to be provided exclusively by cooperating parties and services for which provision responsibility would be shared. For example, State VR may be exclusively responsible for vocational evaluation and training but would share responsibility for client transportation. Another instance might involve State VR providing time-limited, follow-up/follow-along services and State MR/DD assuming that responsibility if extended services are needed.
C. specifying financial structure in the event of co-mingling or shared funding of services, including provisions for fund transfers, financial reporting, and data development.
D. identification of applicable Federal and State laws, regulations and policies of the two agencies and assurance of compliance with special requirements.
E. stipulation of primary responsibility for case management.

Cooperative Agreements Between State VR and Private Community-Based Facilities

Annual agreements between State VR and private vocational rehabilitation facilities have been advocated for a number of years by the Council of State Administrators of Vocational Rehabilitation (CSAVR) and the National Association of Rehabilitation Facilities (NARF). Such agreements have not been widely implemented mostly because of the continuing uncertainty of the level of Federal appropriation for rehabilitation services and the varying levels of services provided by the facilities. The reduction in State VR staff available to coordinate and monitor the cooperative agreements also has hampered implementation. However, the national studies of such agreements generally conclude that contractual agreements have a positive beneficial effect, especially in terms of assuring the availability of employment-related services to severely disabled persons.

In the typical agreement a commitment is made by the State VR agency to set-aside and allocate an amount of funds for specified services to an agreed-upon number of individuals and the private rehabilitation facility (sheltered workshop) agrees to reserve a pre-determined number of evaluation and training services "slots" and provide specific services to State VR agency clients. The major benefit to clients who have developmental disabilities is the guarantee of access to employment-related services. Equally important, the best agreements (e.g., RSA Region IV, Michigan and Kansas) stipulate outcome and performance measures with particular focus on competitive employment placement. (NARF, 1980; CSAVR, 1974)

Cooperative agreements between State VR and private facilities should contain:

A. specificity in terms of services to be provided and staffing requirements; descriptions of disabled individuals to be served (including level of severity) and performance measures to be used.
B. stipulation of amount of funds to be allocated, reporting requirements for the facility and review procedures.
C. provisions for cancellation, termination or revision of the contract in the event of failure of either party to meet the terms of the agreement.

Cooperative Agreements Between State MR/DD and Private Community-based Facilities

Agreements for services between the State MR/DD agency and community-based organizations such as the Association for Retarded Citizens have existed for a number of years as a contract to operate a day care or adult activity center. Contracts for employment-related services generally represent a relatively new development being initiated in a few states (e.g., New Jersey, Colorado). These agreements have evolved from the growing need for adult services and recognition that adults who have developmental disabilities have the capacity for gainful employment. Contracts with vocational rehabilitation facilities (sheltered workshops/work activities centers) most often focus on providing extended sheltered employment services when State VR funding is discontinued. (DHHS/ASPE, 1981) This is perceived as a vital service (support) since VR services tend to be time-limited and VR sponsorship concludes with placement of the individual into the extended sheltered employment program as a "rehabilitated" closure (using the VR definition). Typically the contract focuses on continuing to fund services for the DMR/DD client in the sheltered/work activities employment system rather than the movement of the individual into a more integrated employment setting.

The model of contractual programming being advocated by this project has as its ultimate goal, for those individuals for whom this is appropriate, the movement into supported employment in an integrated setting outside the workshop. The principle of providing extended support for non-competitive employment already has been established in several states in the form of extended sheltered employment. (NJDMR, 1984) The supported employment model shifts the support from inside the workshop to outside in a regular labor market setting of private business and industry. Caution should be exercised to assure that such a funding shift does not eliminate support for those persons who have severe impairments who continue to need sheltered employment services.

A variety of approaches to the provision of extended employment services have been funded recently. (DHHS Administration on Developmental Disabilities and ED Office of Special Education and Rehabilitation Services) These projects will be analyzed by NADDC Employment Initiative Project staff over the next few months. Information on best practices will be made available to State DD Councils, State MR/DD Agencies and other interested organizations within six months.

Cooperative agreements may take the form of purchase of services contracts in establishing employment-related services through private community-based facilities. In designing new programs and/or revising existing contracts consideration should be given to the following:

A. provisions for continuity of services beyond job placement including follow-along supervision and counseling, transportation, social services and income support as needed to maintain the individual in the job.

B. requirement for regular, periodic review of the status of individuals placed in sheltered employment.

C. provision of incentives to encourage sheltered workshops to move the capable individual out into an integrated employment environment.

D. designation of responsibility for case management.

III. Program Funding from Title XIX and Title XX of the Social Security Act

The Home and Community Care Waiver provision of the 1981 Medicaid Amendments to the Social Security Act contained in the Omnibus Budget Reconciliation Act (P.L. 97-35) gave new promise of relieving the funding crisis for community-based services for persons who have developmental disabilities. Unfortunately policy determinations and legal interpretations have excluded vocational rehabilitation and education services as eligible services. While some states have received initial approval of Waiver Plans which include funding of employment-related services, the prospects for long range approval are very discouraging. Most authorities on the Waiver Program advise against inclusion of vocational and employment-related services. (An analysis of the Waiver Program is available from NASMRPD.) One strategy suggested during a November 1984 Washington Conference of the National Association of State Mental Retardation Program Directors pertained to funding vocational training and job placement services from other sources and use of Title XIX Community Care Waiver funds to support ancillary services (e.g., transportation and pre-vocational services).

The Title XX Social Services fund was the initial major resource for extended employment-related services beginning more than a decade ago. (DHHS/SSP, 1979, 1980) Sheltered workshops and activity centers in many states used Federal, State and local fund combinations through the Title XX authority. Unfortunately the cap on appropriations imposed in 1978 has resulted in substantial cutbacks in employment-related services in many states as new priorities are adopted by state planners following the fund capping. However, under Title XX revisions included in the Social Services Block Grant Program of 1981 (Budget Reconciliation Act) there has been a broadening of the Title XX authority to permit vocational rehabilitation services more specifically. There is little information available on recent uses of the

Block Grant funds since the 1981 action but State Councils should pursue this status and potential in their respective states. Also, some states have shifted planning strategies and procedures to permit local communities more influence in fund allocations and this has resulted in special allocations of funds for employment-related services including transportation in a few communities.

IV. Independent Living Rehabilitation Services

Title VII, Comprehensive Services for Independent Living, was a new section of the 1978 amendments to the Rehabilitation Act and the Developmental Disabilities Act contained in Public Law 95-602 which represented an effort by the Congress to address the comprehensive needs of persons who have severe disabilities. Part A has special importance because it authorized funds for the provision of services to supplement and complement the basic vocational rehabilitation services program. Also it is targeted at those persons who have such severe disabilities that the provision of services is likely to be appreciably more costly and of greater duration -- thus responding to the needs of persons who have severe disabilities. This program was funded for the first time in FY1985 at $5 million.

Authorized services which are found in Title VII, Section 702.b and defined in the regulations (34 CFR: 365) include habilitation and rehabilitation needs of the population for which DD Councils have concerns.

The Part B of Title VII, Centers for Independent Living, involves funding for the establishment and operation of independent living centers. The centers are consumer-directed programs which provide a variety of services, most often information and referral. Appropriations for Part B have been relatively limited: $17 million in FY82 and FY83, $19 million in FY84, and $22 million for FY85.

V. Private Community Funding Resources

In the early years of developing services for persons who are disabled the local Community Chest, now identified most often as the United Way, was a major source of support for services provided through private community-based organizations including sheltered workshops. But as Federal support of many programs increased, most of the United Way funds were rechanneled to other human service programs. (DHHS, 1981) The United Way continues to provide some funding, mostly in the form of deficit financing or basic program support to community rehabilitation facilities. (United Way of America, 1984) In some communities the United Way also supports special projects such as transportation for people who are disabled, and they may provide matching funds for project grants to establish or expand programs.

State DD Councils should explore this resource at the state and local level as a possible support for employment-related services for persons who are developmentally disabled -- to supplement and complement Federal and State funding or to cover special costs. The innovative nature of the employment initiative should be attractive to the local (or state) private community fund agency.

In addition, private foundations and corporate donations should be pursued. Foundation and corporate giving has increased significantly in recent years. Reports on private philanthropy note that gifts are targeted mostly on supporting the planning and establishment of new and innovative programs rather than subsidizing existing programs or underwriting operating deficits. (Center for Nonprofit Corporations, 1984)

Employment-related activities are likely to have special appeal to private business and industry because of the direct involvement of the corporate sector. Reports on financial participation of major industry in supported employment and other integrated employment programs serving people with disabilities are found in the literature. (Whitehead, 1984) Information regarding the details of such involvement are being researched by the NADDC Employment Initiative staff and will be disseminated to the State DD Councils within the next several months.

Grants and other allocations by the United Way and similar agencies are generally restricted to private non-profit organizations, e.g., rehabilitation facilities/sheltered workshops. Corporate and private foundation funding likewise tends to target private non-profit organizations but recipients may be local, state, or national in scope of operations--depending on the policy of the contributing organization.

VI. Gaps and Barriers, Incentives and Disincentives

Although many of the service gaps and barriers are discussed or noted in the previous sections, additional comment is necessary in order to provide State Councils with a comprehensive profile of the range of barriers and service gaps and the manner in which they influence the effectiveness of employment-related services. Incentives and disincentives likewise have received attention in earlier sections but need elaboration.

A. Case Management, Coordination of Services and Funding Continuity

The two major gaps most often identified in the literature (Elder and Magrab, 1979; DOL, 1979; DHHS 1981; Bellamy, 1984) are: (1) lack of central coordination (case management) of service delivery and (2) lack of single resource for long-term funding of employment-related services.

Case management has been recognized in the Developmental Disabilities legislation and elsewhere as a critically important component of services delivery. The need is not restricted to employment-related services but the current fragmentation of employment-related programs often results in inefficient case management and disruption in essential services. Special attention should be given to systems of case management as a major function in community living. These guidelines will be limited to addressing case management as it concerns employment-related services. The related impact of the lack of a single resource for long-term funding also will be reviewed.

In most states the state rehabilitation agency is responsible for initial, short-term funding for employment-related services and in this role is technically the coordinator of services. Such a role is effective if the person who has a developmental disability can achieve an optimum level of gainful employment during the initial service delivery period and requires no further service in order to maintain the employment level.

However, many persons meeting the functional definition of developmental disability may require extended employment-related services in order to move further toward independence, productivity and integration. As noted in an earlier section, individuals may receive employment-related services in a community sheltered workshop and be terminated from State VR agency sponsorship as a "rehabilitated client," i.e., gainfully employed. The coordination and/or case management takes on special significance for this client if additional employment-related services are needed to permit the individual to maintain that level of employment and, hopefully, to achieve transition to a more integrated setting of supported employment or competitive employment outside the sheltered workshop. This extension of services seldom can be funded with the State-Federal Rehabilitation allocation because the person has achieved an "acceptable" level of gainful employment (34 CFR: 361.43). Consequently, a separate funding system must be used, typically from state appropriated funds or combinations of funds such as the Title XX Social Services block grant program. The shift in funding responsibility also involves a change in coordination and case management relationships. For example, the State VR agency would be responsible for coordination and case management in the VR-funded portion of services but such responsibility likely would be shifted to another agency if extended services are provided.

Until such time that each State has a system of case management which is responsible for individuals as they move in and out of the array of services, we will continue to see such fragmentation. As an overall goal, Councils need to be working toward the conceptualization and implementation of case management systems for all people with developmental disabilities. In the interim, by working with the several agencies involved with adults, Councils can help to clarify the case management responsibility (with it s concomitant reporting and service gap identification responsibilities). An effective system of case management should surface gaps in services based on aggregatable data across programs.

The lack of a single major funding source for employment-related services and the associated problems of accountability, reporting and coordinating have been addressed in national studies (DOL, 1977, 1979; DHHS, 1981) without resolution. Community services funding legislation (Community and Family Living Amendments) to be considered soon by the Congress will contain the potential to address these problems as they relate to persons who have developmental disabilities. The Title VII Independent Living Rehabilitation Services Program of P.L. 95-602 also has the potential for funding extended employment-related services; however, there has never been any appropriation for Part A, Independent Living Services.

B. Access and Entitlement to Services

The barriers to effective delivery of services, as previously stated, often relate to the lack of entitlement to services for adults with developmentally disabilities. The public agencies involved in purchasing services and the private organizations who deliver services can continue to exercise their right to find a person ineligible for services. But it is important to acknowledge that both groups are known to have a strong desire to have services provided to all individuals that need them. The denial of services may be more attributable to the lack of funding and physical resources than to other causes.

The gaps in services also include a lack of access to employment-related services at the next level. The community based facility providing services may not have the "work station" or job "slot" necessary to provide the services or the funding level may be capped and unable to support additional people. (DHHS, 1981) For example, a shift from an adult activities center to a sheltered workshop may involve a change in sponsoring agency -- DMR supporting adult activities and DVR funding employment-related services. The transfer would involve a new series of intake, diagnosis and program planning -- from an Individualized Habilitation Plan to an Individualized Written Rehabilitation Plan. This transfer is further complicated by differences in eligibility criteria and definitions of developmental disabilities used by the two agencies involved.

Another gap in services access and delivery relates to the lack of a central (state) agency for serving all persons with developmental disabilities. Currently only twelve states have a division or department for developmental disabilities with another eight having a department which is inclusive of developmental disabilities. The major agency funding community services is likely to target people with mental retardation and, technically, must exclude those persons for whom mental retardation is not a primary or secondary diagnosis. The extent of this "falling through the cracks" for persons who do not have mental retardation but are otherwise developmentally disabled is not known.

C. Transportation

Barriers to movement of persons with developmental disabilities into the integrated competitive labor market often include the lack of usable transportation. (Whitehead, 1985; DHHS, 1981) People with developmental disabilities may have access to public transportation and receive training in the use of public transportation. However, if that resource is not available to the competitive work site the prospective worker may not have other options normally available to people who are not disabled -- the individual does not own and likely cannot operate a private automobile. If the individual has a physical impairment which represents a mobility limitation, the barrier is even more acute.

State agencies (VR and MR/DD) usually pay for or provide special transportation for their clients during the time they are receiving services but are unable to provide such assistance (except on a temporary basis) when the individuals enter competitive employment. An unknown number of states and communities provide transportation to the job site through special funding including Title XX, but transportation continues to be a barrier for most individuals who want to enter the competitive labor market.

D. Housing and Residential Services

Persons with developmental disabilities who are returning to the community from institutional settings often are provided community living assistance and housing which may range from group homes and foster care to supervised apartments and independent living. (NASMRPD, 1978) Persons who are no longer able to reside at home also may require housing in order to benefit from employment opportunities.

The issues surrounding housing are too complex to address sufficiently in this section. State DD Councils are already informed regarding housing problems but should note that the movement from a sheltered/supported employment services environment to competitive employment could result in a loss of housing accommodations otherwise available. For example, the community agency providing employment-related services (e.g., ARC local) may also operate a residential program as a part of the "package" of services provided to their clients. Also, in some group homes the residents are able to contribute to the housing costs through an allocation from their Supplemental Security Income (SSI) grant. If the resident moves into competitive employment and earns net wages above the Substantial Gainful Activity level for SSI, the individual may no longer be eligible to remain in the group home and be forced to secure independent housing at a substantially higher cost.

E. Needs and Interests of the Individual

A final step in looking at resolving the barriers issues must take into consideration the desires of the individual who happens to have a developmental disability. The "People First" movement focuses on the person with individual wants and needs. These individuals must have a right to choose the environment in which they live and work; if they prefer the structured environment of the sheltered workshop or activities center to the integrated setting offered outside, their preference should be recognized. On the other hand, we have an obligation to see that those persons have an opportunity to give full consideration to the benefits offered outside the sheltered setting. The concerns of parents of people with developmental disabilities may also be barriers. Recent studies (Hill, 1984) involving interviews with parents indicate stronger support for maintaining persons with developmental disabilities in a sheltered setting than for moving them into competitive employment. The studies showed a positive correlation between the desire to see the individuals remain in the non-competitive setting and the level of severity of the disability.

In considering the needs and interests of the individual perhaps the State DD Councils should extend that review to include an assessment of the role and responsibilities of the person who is disabled. What should the individual be expected to do in terms of self advocacy and self help? Should the person be expected to take the initiative in seeking employment or other employment-related services? For example, the Client Assistance Program (Section 12(c) of the Rehabilitation Act) is designed to assist a person with a handicap but contact must be initiated by the individual or his/her parent or guardian. A number of opportunities for the individual to enhance and expand his/her degree of independence are described in these guidelines. Councils need to address the issue of the role of the individual in that expansion.

F. Incentives and Disincentives

These two issues or factors have been widely discussed in the literature, through Congressional hearings, and at professional conferences. (National Council on the Handicapped, 1984; DHHS, 1981; NARF Conference, 1983) This section will not attempt to provide an in-depth analysis but rather an overview of the most often identified incentives and disincentives.

The incentives for moving persons into gainful employment, especially competitive (integrated) employment, include:

1. Employer Incentives

a) Targeted Jobs Tax Credit Program offers employers who hire qualified persons referred by a State agency a tax credit of up to 50% of the first $6,000 the worker earns in wages for the first year and 25% of the first $6,000 in the second year. For more details see Attachment G or contact NADDC/EIP.

b) On-the-Job Training Program administered by ARC-US, a national program serving persons with mental retardation, pays 50% of the entry wage for the first four weeks and 25% of the entry wage for the second four weeks. This program is directed by job placement staff located throughout the United States.

c) On-the-job training programs also are operated by some State VR agencies but the identification of those states is not known. Stipends and incentives vary widely and may include maintenance and transportation allowances.

d) Employer incentives also are available through the various Job Training Partnership Act (JTPA) programs funded through local Private Industry Councils although stipends and wage subsidies are less often available under JTPA than was the case under CETA. (See Attachment B for details on JTPA.)

e) Employers may receive stipends and other cash incentives under some models of supported employment now operating in various states including Virginia, Washington, New Jersey and Massachusetts.

f) Other employer incentives offered on a more limited scale include on-site supervision, job coaching and follow-along services provided by the referring agency or a third party without cost to the employer.

2. Provider Agency Incentives

a) Sheltered workshops, adult training centers and other community-based facilities are encouraged (by State VR) to place people into competitive employment and often are rewarded for successful closure through increased purchase of evaluation and training services (i.e., increase fee-for-service income). In states using annual purchase of services contracts with sheltered workshops, the incentive is to assure continuation or expansion of the annual agreement through maintaining an effective program of job placement.

b) A few states, including Michigan, have experimented with payment of bonuses for competitive job placement by sheltered workshops and other vocational rehabilitation facilities.

c) Performance contracting used by some local Private Industry Councils involves additional (bonus) payment for successful (non-subsidized) employment placement. The extent of such practice will be investigated further in later studies by NADDC/EIP.

d) The annual contracting for extended sheltered employment services in some states may provide an incentive for sheltered workshops to continue an individual in the extended sheltered program rather than place them in a more integrated employment setting outside the workshop, e.g., competitive employment. In an effort to reduce this incentive, state agencies could focus on competitive employment placement as a performance measure in future contract negotiations. (Marrone and Whitehead, 1985)

3. Client/Employee Incentives

Persons who meet the functional definition of developmental disability as contained in the DD Act (P.L. 98-527) have few incentives (as contrasted with disincentives) to progress through the continuum of gainful employment experiences, perhaps because Federal and State programs were designed to ensure services to meet their needs. As they move through the continuum from segregated, structured and sheltered employment-related services to an integrated employment environment with little or no supportive services, they are likely to be confronted with disincentives which may offset the incentives. For example:

a) The incentives to move toward integrated, competitive employment include the prospect of economic independence, e.g., higher wage earnings and reduction of dependence upon public assistance or family help. The enhanced self-worth from such movement also should be considered -- living and working with people who do not have disabilities.

b) The incentives to remain within the protective environment of an adult activity center or a sheltered workshop include the benefits of special transportation (in many communities), residential services, and social-recreational programs. These services are available as a part of the array of services provided in a community-based facility and likely would not be available if the person moved from the facility to outside employment. For example, the State MR/DD agency is able to fund (or provide) such services in a community-based program on an indefinite basis but may not be able to fund services such as transportation, social services, and residential services if the economic dependency is reduced or eliminated through employment in the competitive sector. Title XX Social Services funds, a common source of support for community-based services, have an economic needs test that competitively employed persons may not be able to meet. The incentive to remain in a structured, supported environment may be strong because the wage earnings of the competitively employed worker who is disabled may not be adequate to pay for needed services (support such as transportation and housing) which are available at no cost in the sheltered setting.

c) The security issue also is an incentive: the structured setting offers a lifetime of services whereas the competitive situation is subject to layoffs and/or other forms of termination of employment, i.e., there is no guarantee of continuity of services. (Whitehead, 1979)

4. The Social Security Program

Some of the disincentives of moving into and advancing in employment were discussed earlier in this section. The major disincentives relate mostly to the provisions of Title II and Title XVI of the Social Security Act. The referenced studies provide extensive coverage of the disincentives of the Social Security System as they relate to the Social Security Disability Insurance (SSDI) program and the Supplemental Security Income (SSI) program. The SSDI program is designed to provide benefits to employees who become disabled and to the disabled dependents of disabled or deceased former employees. The SSI program is a public assistance program for the economically needy, including those with disabilities.

Since most persons with developmental disabilities are likely to have a life-long disability (onset before age 22) and have no previous (covered) employment experience, the Social Security benefit/assistance program is most often SSI (public assistance). (DOL, 1979) The structure of the SSI (Title XVI) program is such that persons with developmental disabilities are discouraged from entering the employment market. (National Council on Handicapped, 1984) The Congress has made numerous attempts to remove disincentives (Disability Amendments of 1980, P.L. 96-265 and Social Security Disability Reform Act, P.L. 98-460). However, implementation of these changes often fails to extend to the state or local Social Security Offices and/or are misinterpreted by the field offices. Efforts for disability disincentive reform are also being continued through demonstration projects and experimental programs including:

a) Section 1619(a) and (b) gives authority to allow the SSI disability recipient to retain SSI benefits and Medicaid eligibility while earning above the Substantial Gainful Activity (SGA) level, currently $300 per month. (See Attachment E for additional information or contact NADDC/EIP for details.)

b) Authority for a research and demonstration project to determine whether persons with severe mental retardation can secure and maintain non-subisdized private-sector jobs. The critical issues center on the threat of loss of cash benefits and non-cash services including Medicaid, social services, housing and transportation. State DD Councils should become knowledgeable in basic criteria and requirements for participation in the SSI and SSDI programs. An understanding of the following is especially important:

   1) Substantial Gainful Activity -- the test of whether a person is eligible for SSI.
   2) Impairment related expenses -- costs associated with the person's disability which are necessary in order for the individual to perform work and normal daily functions.
   3) Formula for computing the amount of the SSI benefit -- earned income and unearned income; countable income and disregard amounts.
   4) Other benefits for which the individual may be eligible even though not qualifiying for cash benefits.

VII. Options and Alternatives to Existing Employment-Related Services

This section is designed to assist State DD Councils in reviewing and evaluating the wide and comprehensive array of options and alternatives which may be available under a variety of conditions. It is not the intention of the NADDC Employment Initiative Project to recommend or advocate adoption of any of the options but rather to provide a framework within which the Councils can assess the viability of each choice. However, because of the complexity of many of the options it is not practical to provide an indepth analysis. Consequently, this section should be perceived as an overview. Additional details are available from NADDC Employment Initiative staff or from the sources cited in this section.

This portion of the guidelines/assessment tool was scheduled as the final section so that appropriate consideration of existing services and facilities could be addressed prior to examining alternatives and reviewing options for change.

A. Major Issues

The National Conference on Pathways to Employment for Developmentally Disabled Adults (Boston 1984) addressed the major issues and concerns regarding employment-related services. The conference planning group is currently preparing a publication describing these issues and recommending action to address them. (Kiernan and Stark, 1985) Other national and state conferences (NADDC, 1984; NARF, 1984; AAMD, 1984; PCEH, 1984; NJARF, 1984; NYSARF, 1983) have likewise addressed the issues and presented new or revised service delivery models. Project grants by Federal agencies (DOE/OSERS, DHHS ADD) and State agencies (DD Councils, State VR and State MR) also have targeted new and exemplary programs in an effort to expand and improve employment-related services to persons with developmental disabilities.

The NADDC Employment Initiative Project will be conducting further study of innovative and exemplary programs in this project year and plans to disseminate technical abstracts to the State DD Councils when the study is completed.

The major issues gleaned from the conferences and the literature include the following:

1. continuum of employment-related services. Persons with developmental disabilities should have an opportunity to engage in gainful employment and to progress in employment to the optimum level

consistent with their needs, capacities and interests. (Kiernan and Stark, 1985)

2. integration to the maximum level possible. The individual should be placed in an integrated employment environment (in the community) in which non-handicapped persons are employed. (Dept. of Education/OSERS, 1984; DD Act, P.L. 98-527, 1984) The debate centers on the appropriateness of the segregated environment of sheltered employment. (Marrone and Whitehead, 1985) Surveys of parent attitudes (Hill, 1984) reflect support for the segregated environment for persons who are the most severely disabled. As mentioned in the previous section, the interests of the individual with the disability should be the primary consideration in this issue. The resolution of this issue may involve recognition that a continuum from segregated to integrated services/employment is desirable for some persons with developmental disabilities.

3. role of community-based private facilities in providing employment-related services. Position papers of the Department of Education (OSERS, 1984) suggest that community-based adult day programs and sheltered workshops may no longer be responsive to transitional employment needs of adults with severe disabilities. Others (Wehman-RRTC, 1985; DHHS, 1981) see the sheltered workshops as playing a vital role in preparing persons with severe disabilities for supported and/or competitive employment. The advocates of the continuing role of sheltered workshops (Kiernan and Stark, 1985; PCEH, 1978; DOL, 1979; NARF, 1984) urge increased focus on transitional employment services and improved job placement programs. There is concern that the move to supplant sheltered workshops with a new and separate system may be neither economically nor physically feasible.

4. case management, services coordination and continuum of employment-related services. The lack of central authority for case management and services coordination was cited in the previous section. The options in service delivery are restricted by that problem. Also, this program gap limits the access to a continuum of employment opportunities. (Elder and Magrab, 1979)

5. wage payments to workers who have developmental disabilities. Federal statutes (Fair Labor Standards Act) and some State statutes are intended to ensure that workers are given a fair and reasonable wage and that they are not excluded from employment because of impaired productivity. Some organizations (AFL-CIO, American Federation of the Blind, 1980) advocate abolition of the minimum wage exemption laws and payment of at least the statutory minimum rate for all workers with disabilities. (DHHS, 1981)

6. long term funding for employment-related services. As noted in previous sections, the lack of a single, major funding source for extended employment-related services in most states constitutes a major barrier to upward mobility and the sustaining of employment opportunity. The state rehabilitation agency and the Private Industry Councils provide funding for time-limited employment services but are unable to fund services indefinitely. The Title VII Independent Living Rehabilitation Services Authority contained in 1978 amendments to the Rehabilitation Act (P.L. 95-602) holds the potential for providing long term support but no appropriations have been made under Part A of the program to date.

   Some states (Georgia, North Carolina, Michigan, Wisconsin and Minnesota) have used Title XX Social Services funds in combination with state and local funds and others have used state funds exclusively (New Jersey, New York) to finance extended sheltered employment. One state (Massachusetts) is experimenting with a portability model under which the individual may choose extended sheltered employment or extended supported employment services program options. These and similar programs will be studied in the next phase of the NADDC Employment Initiative Project.

7. anti-discrimination and affirmative action in employment. Throughout this publication the problems of accessing employment-related services have been addressed. However, beyond service delivery, persons with developmental disabilities often experience difficulty in entering the competitive labor market. (PCEH, 1980) The affirmative action and non-discrimination requirements contained in Federal and State laws should be reviewed and analyzed by State DD

Councils. Title V of the Rehabilitation Act of 1973 as amended contains provisions regarding discrimination: section 501 concerns Federal government employment, section 502 pertains to architectural barriers, section 503 covers employment by Federal contractors and section 504 concerns discrimination against otherwise qualified persons by any program or activity receiving Federal funds. Of the sections, 504 is considered to be the most relevant. Unfortunately, prospective employers are not likely to be covered by the program because they are not receiving Federal funds. In response to this gap a large number of states have enacted laws concerning employment of persons who are disabled. (PCEH, The Law and Disabled People, 1980) Information available in 1979 indicated that most states had some form of statute concerning employment of persons with handicaps. However, out of 37 states with laws affecting private employers only 20 states included persons with mental handicaps. Further study is needed to identify model state legislation and determine the effect of the Federal and state legislation.

B. Continuum of Employment-Related Services

If the concept of a continuum of services is accepted, a model of such a continuum may involve a series of employment opportunities which begin at the most segregated level and progress to the most integrated level as follows:

adult activity/day care -> work activities center -> regular program
sheltered workshop -> supported employment -> competitive employment

A person with a developmental disability would enter through the basic service program from an institution, for example, and progress through the programs over a period of days, weeks, or years. On the other hand, an individual leaving school could conceivable by-pass the community service system and enter into competitive or supported employment directly. The individual should be permitted to enter or exit at any point along the continuum or by-pass any step as appropriate. The individual's progress would be paced and governed by several factors:

1. successful mastery of the competencies required (i.e. achieving the skill level required for movement)

2. effectiveness of the services provided
3. availability and accessibility of services at the next step
4. desire on the part of the individual to move to the next (more integrated) level

The level of employment-related services in each program along the continuum is summarized below:

1. Adult activities involve independent living training but are not likely to involve paid work except as an occasional therapeutic service

2. Sheltered employment:

    a. work activities center - could involve independent living and vocational training; likely to include paid work as a major program; designed to serve the individuals who are the least productive (NARC, 1974); wage earning likely to range below 50% of the statutory rate (DOL, 1977, 1979)

    b. regular program sheltered workshop - most often involves vocational activities and paid work as the primary program; wage earnings range from 50% of the minimum set by the Fair Labor Standards Act and above. (DOL, 1977 & 1979)

3. Supported employment involves employment in a setting outside the sheltered workshop with support provided to assist the worker in sustaining and continuing in employment. Wage earning could range from slightly below the statutory minimum to above the minimum. The support could involve one or more of the following:

    *job coaching, counseling and follow along service for a period of time determined by the needs of the individual (and the resources of the provider agency)
    *special supervision and/or training provided by the employer
    *subsidy or other incentive to the employer to offset the expense of lower productivity, special accommodations or other costs related to the performance of the worker

This program of supported employment is a relatively new but emerging model which is attracting widespread attention as a response to the desire to place persons with developmental disabilities in more integrated settings outside the sheltered workshop. In some models the workshop is responsible for training the candidates for supported employment.

4. Competitive employment is generally considered to be employment outside the sheltered workshop setting in which workers with disabilities are employed alongside workers who are not disabled, i.e., the fully integrated setting. Competitive employment may be initiated by a state agency (most often VR), by a sheltered workshop, through a special project funded by grants from Rehabilitation or Developmental Disabilities sources, by Private Industry Councils, or by the State Employment Services. In some instances the individual will secure his or her own job either independently or with guidance from one of the listed agencies.

   The options within the competitive employment category range from individual employment and group employment to self employment (e.g., a business owned and operated by a person who is disabled or by a group of persons).

   The range of employment options is beyond the scope of this paper. In any event, consideration of the employment continuum should assume that persons with developmental disabilities could enter or exit the employment system at any point which is appropriate to the individual's needs and capacities.

C. Wage Payments

The payment of hourly wages to workers with disabilities is generally regulated by Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 as amended in 1966 (P.L. 89-601). The exception would be wages paid for production of goods and services not involved in interstate commerce and most states cover this area through State statutes.

The FLSA authorizes payments at rates below the statutory minimum hourly wage for workers whose physical and/or mental handicap impairs their productivity. Certificates to permit payment of wages below the statutory rate are issued on a group and individual basis to sheltered workshops, including work activities centers. Individual rate certificates also are authorized for workers engaged in competitive employment (outside the workshop) in which the severity of disability hampers productivity. It is important to note that the FLSA (29 CFR 525.9) requires payment of wages (in all certificated programs) which are commensurate with the productivity of a nonhandicapped worker performing essentially the same work. For specific details consult the regulations pertaining to the FLSA program, 29 CFR, Parts 524, 525 and 526. The requirements of FLSA are considered to be very complex, second only to the Social Security Act in regard to programs affecting persons with disabilities.

A variety of options are available to workers who are employment-handicapped. These are especially significant for persons with developmental disabilities because the FLSA permits the employer an exemption from the payment of the statutory minimum hourly wage rate if the employer can provide proof of the productivity limitation. Work activities centers and other sheltered workshops, often criticized for low wage payments, note that their programs were designed and established to serve the most severely disabled segment of the handicapped population, i.e., to permit the individuals to work at their own pace and be paid accordingly. For example, workers in work activities centers are considered to have "inconsequential productivity," i.e., below 35 percent. Workers in regular program (sheltered) workshops are generally considered to have productivity capacity averaging about 50 to 75 percent of that of a non-handicapped worker. (DOL, 1977 & 1979) Investigations conducted annually by the Department of Labor (Employment Standards Administration) and studies by General Accounting Office (GAO, 1981) and DOL (1977, 1979) have shown that illegal underpayment of wages is not a significant problem and that most underpayment of wages is attributable to lack of technical wage data.

The authority for payment of subminimum wages for workers in the competitive labor market has been used very little in the past (DOL, 1979; DHHS, 1981) but the expansion of employment-related activities for persons who have developmental disabilities may cause a closer examination of that option, especially for persons who fall significantly short of meeting productivity standards of private business and industry. In those instances employers will have several options:

1. payment of at least $3.35 per hour and absorbing the expense of the difference in productivity
2. payment of at least $3.35 per hour through subsidy from the third party referring and/or sponsoring the employment of the individual
3. securing an Individual Rate Certificate as authorized in 29 CFR 524 and payment of less than $3.35 an hour
4. arranging through contract with the referring or sponsoring organization (usually a sheltered workshop) for payment of wages by the third party. In this arrangement the individual (or groups of individuals) would be an independent contractor. It should be noted that this is an option that has not been challenged or court-tested.

These options have even greater importance as the movement toward supported employment grows. The 1984 Amendments to the Developmental Disabilities Act (P.L. 98-527) note that supported employment is intended for those "persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely..." (section 102.11(F).

The options selected by employers are likely to be influenced by the following:

*the levels of productivity of the individuals and the perceived extent of employment-related problems
*the paper work required to secure a sub-minimum Individual Rate Certificate
*the availability of financial incentives, e.g., wage subsidies and tax credits (through Targeted Jobs Tax Credit Program)
*the amount of support anticipated from the referring/sponsoring agency, e.g., coaching, counseling and follow-along services
*the commitment of the employer to assure the success of the placement

It should be noted that the Fair Labor Standards Act pertains to payment of at least the minimum wage set by statute; there is no legal or legislative authority to require payment of wages above the statutory rate (currently $3.35 per hour). For example, a worker with a disability could be employed in a job for which the prevailing rate may be $4.50 per hour but be paid only $3.35 per hour. This issue was addressed in the General Accounting Office study (GAO, 1981) and reviewed by the Department of Labor Advisory Committee on Sheltered Workshops (1983-84). The wage payment issue could become a wage discrimination citation in such instances but efforts to secure legal action have not been successful, partially because the legal authority is unclear.

D. Services Coordination and Supervision

Persons involved in an employment program provided in a supported or sheltered environment are most likely to benefit from and receive special assistance in the form of services coordination and supervision. The concept of integration and independence, however, involves diminishing and gradual withdrawing support services. Wehman (1984) describes the support as "interventions" when used in connection with a supported employment situation leading to competitive employment.

The following chart lists the various types of sheltered employment, supported employment and competitive employment which may be available for persons with developmental disabilities:

Services Coordination and Supervision

Type of Employment	Coordination	Supervision
I. Sheltered Employment		
A - Work Activities Center	center	center staff
B - Regular Program Workshop	workshop	workshop staff
II. Supported Employment		
A - Employer Administered	employer	employer
B - Sheltered Workshop Administered	sheltered workshop	sheltered wkshp staff
C - Third Party Administered (VR, MR or private orgn.)	employer or third party	employer or third party
D - Projects with Industry	project staff	employer
E - On-the-Job Training (ARC-US; EFA)	ARC/EFA	employer
F - Private Industry Council Project (JTPA)	project staff	employer or project staff
III. Competitive Employment		
A - State VR Agency	VR	employer
B - PIC/JTPA Project	project staff	employer
C - On-the-Job Training	project staff	employer
D - State Employment Services	employer	employer
E - Sheltered Workshop		
1) work stations in industry	workshop	workshop (or employer)
2) enclave	workshop	workshop (or employer)
3) direct (individual) placement	workshop	employer
F - Projects with Industry	project staff	employer
G - Self Employment (business enterprise)	sponsoring agency	self

The intensity and frequency of supervision (intervention) is likely to vary widely and be influenced by the needs of the worker, the staffing structure of the sponsoring or referring agency, the availability of funding, and the employer preference.

E. Role of the Employer

Inadequate attention has been given to the critical role played by employers in providing job opportunities, identifying job requirements and accommodating the skills and abilities of persons with developmental disabilities. The national commitment of major industry and trade associations has been largely responsible for the relative success of the President's Employment Initiative and can take on even greater importance in the continuing effort of employment-related activities in the future.

Numerous employers and employer associations have pledged jobs. The State DD Council can ensure that the job leads are appropriately followed up through serving in a facilitator or communicator role. The recent NADDC survey of State DD Council Involvement in Employment-Related Activities indicated a lack of central coordination for identifying job-ready qualified workers and matching them with job leads. Many of the job pledges resulting from the Employment Initiative seemed to be commitments for future job opportunities and thus represented long range employment potential.

REFERENCES

Bellamy, G., O'Connor, G., and Koran, O. (eds) 1979. Vocational Rehabilitation of Severely Handicapped Persons: Contemporary Service Strategies. University Park Press, Baltimore.

Bellamy, G., Rhodes L, Wilcox B. 1984. Quality and Equality in Employment Services for Adults with Severe Disabilities, University of Oregon, Eugene.

Cox, J. and Whitehead, C., 1980. Needed: a national policy on employment of handicapped individuals. Address to American Association on Mental Deficiency, San Francisco, California.

Comptroller General, 1981. Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops. United States General Accounting Office, Washington, D.C.

________, 1980. Better Re-evaluations of Handicapped Persons in Sheltered Workshops Could Increase Their Opportunities for Competitive Employment. United States General Accounting Office, Washington, D.C.

DeFazio, N. and Flexer, R., 1983. Organizational Barriers to Productivity, Meaningful Wages and Normalized Work Opportunity for Mentally Retarded Persons. In Mental Retardation.

Department of Education, 1984. Supported Employment for Adults with Severe Disabilites: An OSER Initiative, Office of the Assistant Secretary for Special Education and Rehabilitative Services, Washington, D.C.

Department of Health and Human Services, 1980. "Report on Title XX Social Services Expenditures Plans of the States; Office of Social Services Policy, Washington, D.C.

Department of Health, Education and Welfare, 1978. Development of Formal Cooperative Agreements Between Special Education, Vocational Rehabilitation, and Vocational Education Programs to Maximize Services to Handicapped Individuals, Commissioner of Education and Commissioner of Rehabilitation Services memorandum, Washington D.C.

Department of Health, Education and Welfare 1979, Report on State Vocational Rehabilitation Agency Services, Rehabilitation Services Administration, Washington D.C.

Dittrich, A., 1975. Work Activity and the Developmentally Disabled, Bureau of Economic Research, Rutgers University, New Brunswick, N.J.

Elder, J. and Magrab, P., ed., 1979. Planning for Services to Handicapped Persons, Paul Brookes, Publisher, Baltimore, Maryland.

Hawley, I. and Whitehead, C., 1981. Rights and Entitlements of the Handicapped: An Issue for Public and Private Service Providers. In Journal of Rehabilitation Administration Vol. 5, No. 2.

Hill J. 1984 Survey of Parent Attitudes, Rehabilitation Research and Training Center, Richmond, Virginia.

Kiernan, W. and Stark, J. ed., 1985. Pathways to Employment for Adults with Developmental Disabilities, Brookes Publishing, Baltimore, Maryland, Publication Pending.

Marrone, J. and Whitehead, C., 1985. Time Limited Evaluation and Training, in Pathways to Employment for Adults with Developmental Disabilities, Brookes Publishing, Baltimore Maryland, Publication Pending.

McCarron, L., 1984. Vocational Preparation for Autistic Persons, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Rehabilitation Commission, Austin, Texas.

Michigan Council on Developmental Disabilities, 1984. " Barriers in the Vocational Continum," draft position papers, Lansing Michingan 1984.

Mid-East Regional Resource Center, 1979. "National Workshop for the Development of Comprehensive Secondary Programming for Rehabilitation Services for the Handicapped," Washington D.C.

National Association for Retarded Citizens, 1974. Planning and Organizing a Sheltered Workshop for Mentally Retarded Persons, Arlington, Texas.

________, 1974. A Guide to Establishing an Activity Center for Mentally Retarded Persons, Arlington, Texas.

National Association of Rehabilitation Facilities, 1980. "Guidelines for Cooperative Agreements Between State Vocational Rehabilitation Agencies and Rehabilitation Facilities," Washington, D.C.

National Association of State Mental Retardation Program Directors, 1978. Housing for Developmentally Disabled Citizens: An Analysis of Policy Issues, Alexandria, Virginia.

National Council on the Handicapped, 1984. Disincentives Related to Employment of Persons with Disabilities, Washington, D.C.

New Jersey Division on Mental Retardation, 1984. "Cooperative Agreement of New Jerey Division of Vocational Rehabilitation Services and New Jersey Division on Mental Retardation," Department of Human Services, Trenton, New Jersey.

New York State Association of Rehabilitation Facilities, 1984. Alternatives to Traditional Sheltered Workshop Services. Albany, New York (monograph).

Northwest Association of Rehabilitation Industries, 1976. Work Oriented Rehabiltation Dictionary and Synonyms, Liz Cawood, Ed. Seattle, Washington

Pollard, A.; Hall, H.; and Keeran, C.; 1979. Community Service Planning, in Planning for Services to Handicapped Persons, Paul Brookes, Publisher, Baltimore, Maryland.

President's Committee on Employment of the Handicapped, 1984. Avenues to Employment: A Guide, Washington, D.C.

_________, 1980. The Law and Disabled People: Selected Federal and State Laws Affecting Employment and Certain Rights of People with Disabilities, Washington, D.C.

_________, 1977. Pathways to Employment: Recommendations made at the Meeting November 1976, Washington D.C. 12-13 (monograph).

_________, 1984. "Report on State Activities in JTPA," Washington D.C.

Public Law 95-602, The Rehabilitation, Comprehensive Services, and Developmental Disabilities, Amendments of 1978.
U.S. Department of Education, 1981. Annual Report to the President and the Congress, Fiscal Year 1980, On Federal Activities Related to the Administration of the Rehabilitation Act of 1973 As Amended, Office of Special Education and Rehabilitative Services, Washington D.C.

U.S. Department of Health and Human Services , 1980. Training and Employment Services Policy Analysis: Report on Field Testing Seminars in Six States. Office of the Assistant Secretary for Planning and Evaluation, Washington, D.C.

__________, 1981. Final Report: Training and Employment Services for Handicapped Individuals. Office of the Assistant Security for Planning and Evaluation, Washington, D.C.

U.S. Department of Labor, 1977. Sheltered Workshop Study: Workshop Survey, Washington, D.C., Vol. I.

_________, 1979. Sheltered Workshop Study: Study of Handicapped Clients in Sheltered Workshops and Recommendations of the Secretary. Washington, D.C., Vol. II

U.S. House of Representatives, 1980. Oversight Hearings on the Section 14(c) Fair Labor Standards Act, Subcommitte on Labor Standards, Washington, D.C.

Wehman, P., 1981. Competitive Employment: New Horizons for Severely Disabled Individuals, Paul Brookes, Publisher, Baltimore, Maryland.

Whitehead, C., 1979. Sheltered Workshops - Effective Accommodation or Exploitation, AMICUS, South Bend, Indiana.

ATTACHMENTS

Please note that the attached materials are direct abstracts from publications of the respective agencies involved. In some instances the terms used, e.g., "client, recipient, handicapped individual," may not be consistent with the "people first" policy and practice of NADDC.

Special appreciation is also noted for the President's Committee on Employment of the Handicapped for Attachments B and D, and to the Administration on Developmental Disabilities for Attachment E.

Attachment A

Abstract

EDUCATION OF HANDICAPPED ACT
REQUIREMENTS FOR STUDIES OF SERVICE NEEDS OF HANDICAPPED STUDENTS LEAVING SCHOOL

Background:

The State Developmental Disabilities Plan requirements of Public Law 98-527, Part B, Section 122(b)(4)(D) include consideration of data collected by the State education agency under 618(b)(3) of the Education of the Handicapped Act as amended by Public Law 98-199.

Abstract: P.L. 98-199, Education of the Handicapped Act

Section 618: Evaluation

(a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations--

(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth; and

(2) to provide Congress with information relevant to policy-making and provide Federal, State, and local educational agencies with information relevant to program management, administration, and effectiveness with respect to such education.

(b) In carrying out the responsibilities under this section, the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act, and under other Federal laws relating to the education of handicapped children and youth, and such additional information, from State and local educational agencies and other appropriate sources, as is necessary for the implementation of this Act including--

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise, by disability category and age, and anticipated services for the next year;

(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

Attachment B

JOB TRAINING PARTNERSHIP ACT

Summary and Implications for Serving Persons with Developmental Disabilities

The Job Training Partnership Act (JTPA) of 1982, P.L. 97-300, authorizes job preparation and job training for people who are economically disadvantaged and for people who face serious barriers to employment. Emphasis is placed on the achievement of goals to increase the employment of participants and to reduce dependency.

Under the JTPA Act, funds go from the Federal government to the Governors of each state. Each Governor appoints a State Job Training Coordinating Council to propose designated Service Delivery Areas (SDA) for the dispersal of all funds, including discretionary funds. The chief locally elected officials in each SDA consider nominations from various agencies in the SDA and then appoint a Private Industry Council (PIC) to develop a job training plan for spending the JTPA funds. Within the Law and the regulations governing the dispersal of funds, several factors provide some discretion in the use of funds. These factors can be used to channel funds toward serving individuals with developmental disabilities.

Although the U.S. Department of Labor has established national performance standards for the JTPA program, Governors have the authority to make adjustments in the national standards when certain factors are present. In specific, the characteristics of the client populations can be used by Governors to adjust these national standards in an effort to serve persons with developmental disabilities. Such changes would appear in the "Governor's Coordination and Special Services Plan." Although many Governors have acted favorably on this authority, few individuals with severe handicaps are participating in programs sponsored by local PICs.

The regulations governing JTPA performance standards also allow some discretion within the definitions applying to "positive terminations." The fact that a client can be designated as a positive termination if he/she has achieved PIC (locally) recognized competencies gives the PIC some degree of local prerogative if they chose to serve more individuals with severe handicaps and include them as positive terminations.

Unlike the earlier CETA Program, JTPA does not consider a person eligible simply because their handicap is considered a substantial barrier to employment. Under JTPA individuals with handicaps are required to meet income eligibility criteria in order to be eligible for services and this factor has limited the participation of individuals in the program. However, this eligibility requirement may be waived by considering an individual with a handicap as a "family of one" even when he/she is living with a family whose income exceeds the designated guidelines. In this case, only the individual's income would be considered in determining eligibility. The income eligibility criteria can also be waived when up to 10 percent of the program participants in a services delivery area may be individuals who are not economically disadvantaged but have a barrier to employment such as a physical or mental handicap.

Although the Law states that at least 70 percent of an area's allocation must be spent on training, other aspects of the law provide some discretion in the use of JTPA funds. The 30 percent limitation on administrative and support costs may be waived by the Governor when a local area proposes to serve a disproportionately high number of persons who require exceptional support service costs as would be necessary in serving persons with developmental disabilities.

JTPA has given the business community greater responsibility in designing and operating the program. A majority of the membership and the chairperson of each SDA's Private Industry Council (PIC) must represent business and industry. Furthermore, rehabilitation agencies and community-based organizations are specifically mentioned for membership on the PICs and on the State Job Training Coordinating Councils. Representation of education and rehabilitation agencies is required on the PICs.

There are some other methods that can be used to help persons with developmental disabilities gain access to services provided with JTPA funding. Representatives from the staff of facilities serving individuals who are developmentally disabled should attend PIC meetings to explain DD programs, promote the Employment Initiative, and advocate for training resources. The DD State Planning Councils could use similar techniques to inform and influence the State Job Training Coordinating Council by helping them better understand the training needs of persons with developmental disabilities.

In evaluating the impact of JTPA the President's Committee on Employment of the Handicapped and a project at the University of Wisconsin have found evidence that participation of individuals with disabilities in JTPA has been quite restricted. This may be due in part to the fact that PICs are not required to detail the procedures necessary to meet the employment needs of persons with handicaps. On the other hand, PICs are required to establish performance standards which become the criteria used in program evaluation. The standards are often rigid, failing to recognize the unique needs of individuals with handicaps. This can lead to a "creaming effect" in the selection of participants.

Attachment C
(Part 1)

ABSTRACT OF REGULATIONS
STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

(34 CFR: 361)

Table of Contents

and

Pertinent Sections

Attachment C
(Part 1)

Abstract of Regulations

State Vocational Rehabilitation Services Program

(34 CFR: 361)

*Table of Contents

*Pertinent Sections

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.
361.1 The State vocational rehabilitation services program.

Subpart B—State Plans for Vocational Rehabilitation Services

STATE PLAN CONTENT: ADMINISTRATION

361.2 The State plan: General requirements.
361.3 State plan approval.

BEST COPY AVAILABLE

Sec.
361.4 Withholding of funds.
361.5 State agency for administration.
361.6 Organization of the State agency.
361.7 Designation of substitute State vocational rehabilitation agency.
361.8 State unit director.
361.9 Local administration.
361.10 Methods of administration.
361.11 Shared funding and administration of special joint projects or programs.
361.12 Waiver of Statewideness.
361.13 Cooperative programs involving funds from other public agencies.
361.14 Staffing of the State's vocational rehabilitation program.
361.15 Affirmative action plan for handicapped individuals.
361.16 Staff development.
361.17 State studies and evaluations.
361.18 Policy development consultation.
361.19 Cooperation with other public agencies.
361.20 Establishment and maintenance of information and referral resources.
361.21 State plan for rehabilitation facilities.
361.22 Utilization of rehabilitation facilities.
361.23 Reports.
361.24 General administrative and fiscal requirements.

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

361.30 Processing referrals and applications.
361.31 Eligibility for vocational rehabilitation services.
361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.
361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.
361.34 Extended evaluation to determine vocational rehabilitation potential.
361.35 Certification: Eligibility, extended evaluation to determine vocational rehabilitation potential; ineligibility.
361.36 Order of selection for services.
361.37 Services to civil employees of the United States.
361.38 Services to handicapped American Indians.
361.39 The case record for the individual.
361.40 The individualized written rehabilitation program: Procedures.
361.41 The individualized written rehabilitation program: Content.
361.42 Scope of State unit program: Vocational rehabilitation services for individuals.
361.43 Individuals determined to be rehabilitated.
361.44 Authorization of services.
Sec.
361.45 Standards for facilities and providers of services.
361.46 Rates of payment.
361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
361.48 Appeal procedures.
361.49 Protection, use and release of personal information.
361.50 Scope of State unit program. Management services and supervision for small business enterprises for severely handicapped individuals.
361.51 Scope of State unit program: Establishment of rehabilitation facilities.
361.52 Scope of State unit program: Construction of rehabilitation facilities.
361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.
361.54 Scope of State unit program: Telecommunications systems.
361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.
361.56 Utilization of community resources.
361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
361.58 Periodic review of extended employment in rehabilitation facilities.

Subpart C—Financing of State Vocational Rehabilitation Programs

FEDERAL FINANCIAL PARTICIPATION

361.70 Effect of State rules.
361.71 Vocational rehabilitation services to individuals.
361.72 Management services and supervision for small business enterprises for severely handicapped individuals.
361.73 Establishment of rehabilitation facilities.
361.74 Construction of rehabilitation facilities.
361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.
361.76 State and local funds.
361.77 Shared funding and administration of joint projects or programs.
361.78 Waiver of Statewideness.

ALLOTMENT AND PAYMENT

361.85 Allotment of Federal funds for vocational rehabilitation services.
361.86 Payments for allotments for vocational rehabilitation services.
361.87 Method of computing and making payments.
361.88 Refunds.
361.89 Determining to which fiscal year expenditures are chargeable.

BEST COPY AVAILABLE

Sec.
361.90 A[illegible]
361.91 A[illegible] procedures and expenditures statement.

Subpart D—Payment of Costs of Vocational Rehabilitation Services for Disability Beneficiaries From the Social Security Trust Funds

361.110 General.
361.111 Purpose.
361.112 Applicability of other regulations.
361.113 Definitions.
361.114 State plan requirements.
361.115 Conditions and limitations.
361.116 Payments of trust funds.
361.117 Budgets.
361.118 Reports.

Subpart E—Vocational Rehabilitation Services for Supplemental Security Income Recipients

361.120 General.
361.121 Purpose.
361.122 Applicability of other regulations.
361.123 Definitions.
361.124 State plan requirements.
361.125 Conditions and limitations.
361.126 Payments of supplemental security income program funds.
361.127 Budgets.
361.128 Reports.

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

361.150 Purpose.
361.151 Special project requirements.
361.152 Allotment of Federal funds.
361.153 Payments from allotments.
361.154 Methods of computing and making payments.
361.155 Reports.

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

361.170 General provisions.
361.171 How to request a hearing.
361.172 Hearing issues.
361.173 What the purpose of a hearing is.
361.174 Who presides.
361.175 How to be a party or an amicus curiae to a hearing.
361.176 What happens to a petition.
361.177 Rights of parties and amicus curiae.
361.178 Authority of presiding officer.
361.179 Discovery.
361.180 How evidence is handled.
361.181 What happens to unsponsored written material.
361.182 What the record is.
361.183 Posthearing briefs.
361.184 Decisions.

Sec.
361.185 When a decision is effective.
361.186 How the State may appeal.

AUTHORITY: Sec. 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)), unless otherwise noted.

Subpart A—General

§ 361.1 The State vocational rehabilitation services program.

(a) *General.* Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation services authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.

(b) *Regulations which apply to the State vocational rehabilitation service program.* The following regulations apply to the State plan for vocational rehabilitation services program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-administered programs) and 34 CFR Part 77 (Definitions); and

(2) The regulations in this Part 361.

(c) *Definitions which apply to the state vocational rehabilitation service program.*

(1) The following terms used in this Part 361 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Private"
"Public"
"Secretary"
"State"
"Work of Art"

(2) The following definitions also apply to this Part 361:

"*Act*" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"American Indian" means a person who is a member of an Indian tribe.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Blind" or "blind individual" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Secretary" means the Secretary of the Rehabilitation Services Administration.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Construction of a rehabilitation facility" means:

(i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Section 7(1) of the Act; 29 U.S.C. 706(1))

"Designated State unit" or "State unit" means either:

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(d))

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Section 7(7) of the Act; 29 U.S.C. 706(7))

"Employability" refers to a determination that the provision of vocational rehabilitation services is likely to enable an individual to enter or retain employment consistent with his capacities and abilities in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebound employment; or other gainful work.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Establishment of a rehabilitation facility" means:

(i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;

(ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or

(iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Section 7(4) of the Act; 29 U.S.C. 706(4))

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

(i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

(ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

(iii) Any other goods or services necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual

BEST COPY AVAILABLE

can benefit from vocational rehabilitation services in terms of employability;

(iv) Referral to other agencies or organizations, when appropriate; and

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is a handicapped individual for whom a vocational goal is feasible.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

"Family member" or "member of the family" means any relative by blood or marriage of a handicapped individual and other individual living in the same household with whom the handicapped individual has a close interpersonal relationship.

(Section 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"Handicapped individual" except in § 361.15(b), § 361.51(e), and § 361.52(g) means an individual:

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Handicapped individual," for purposes of § 361.15(b), § 361.51(e), and § 361.52(g), means an individual:

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Section 7(7)(B) of the Act; 29 U.S.C. 706(7)(B))

"Local agency," unless the context clearly [illegible]cates differently, means an agenc[illegible] unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Section 7(8) of the Act; 29 U.S.C. 706(8))

"Physical and mental restoration services" means:

(i) Medical or corrective surgical treatment;

(ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Convalescent or nursing home care;

(vii) Drugs and supplies;

(viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(ix) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(x) Podiatry;

(xi) Physical therapy;

(xii) Occupational therapy;

(xiii) Speech or hearing therapy;

(xiv) Psychological services;

(xv) Therapeutic recreation services;

(xvi) Medical or medically related social work services;

(xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or

which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Prevocational conditioning or recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech and hearing therapy;

(vi) Psychological and social services;

(vii) Evaluation of rehabilitation potential;

(viii) Personal and work adjustment;

(ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services and other adjustment services to blind individuals; and

(xii) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Section 7(11) of the Act; 29 U.S.C. 706(11))

"Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Section 130(e) of the Act, 29 U.S.C. 750(e))

"Severely handicapped individual" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Section 7(13) of the Act; 29 U.S.C. 706(13))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

BEST COPY AVAILABLE

BEST COPY AVAILABLE

ion 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State plan" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.2(d) of this part.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Sections 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Vocational rehabilitation services" when provided to an individual, means those services listed in § 361.42 of this part.

(Section 103(a) of the Act, 29 U.S.C. 723(a))

"Vocational rehabilitation services" when provided for the benefit of groups of individuals, also means:

(i) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment of a rehabilitation facility;

(iii) The construction of a rehabilitation facility;

(iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(v) The use of existing telecommunications systems; and

(vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Section 103(b) of the Act; 29 U.S.C. 723(b))

"Workshop" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilition process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Sections 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

[46 FR 5524, Jan. 19, 1981]

Subpart B—State Plans for Vocational Rehabilitation Services

SOURCE: 46 FR 5526, Jan. 19, 1981, unless otherwise noted.

STATE PLAN CONTENT: ADMINISTRATION

§ 361.2 The State plan: General requirements.

(a) *Purpose.* In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in § 361.11 (Shared funding and administration of special joint projects or programs) and § 361.12 (Waiver of Statewideness).

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary. The State plan must consist of:

(1) A part providing detailed commitments specified by the Secretary which must be amended or reaffirmed every three years; and

(2) A part containing a fiscal year progammming description, based on the findings of the continuing Statewide studies (§ 361.17), the annual

evaluation of the effectiveness of the State's program (§ 361.17) and other pertinent reviews and studies. This annual programming description must include:

(i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;

(ii) Estimates of the number of handicapped individuals who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who are the most severely handicapped;

(iv) A description of the order of selection (§ 361.36) of groups of handicapped individuals to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible handicapped individuals who apply); and

(v) A statement of the general outcome and service goals to be achieved for handicapped individuals in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, which are measurable in terms of service expansion or program improvement in specified program areas, and which the State unit plans to achieve during a specified period of time.

(c) *Separate part relating to rehabilitation of the blind.* If a separate State agency for the blind administers or supervises the administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

(d) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disbilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act. The Secretary may approve the consolidated rehabilitation plan to serve as the substitute for the separate plans which would otherwise be required.

BEST COPY AVAILAB

§ 361.11 Shared funding and administration of special joint projects or programs.

(a) *Procedural requirements.* In order to carry out a special joint project or program to provide services to handicapped individuals, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he has determined will more effectively accomplish the purpose of the Act and may also waive the provisions of § 361.2(a) that the State plan must be in effect in all political subdivisions of the State.

(b) *Scope of written agreement.* The State plan must assure that each special joint project or program is based on a written agreement which:

(1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each;

(2) Specifies the period of the joint project or program, and plans for anticipated continuation;

(3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;

(4) Provides written assurance that funds will be legally available for purposes of the joint project or program;

(5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;

(6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and

(7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.12 Waiver of Statewideness.

(a) *Purpose of waiver.* If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of handicapped individuals with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.

(b) *Procedural requirements.* The State plan must assure in these cases that the State unit:

(1) Obtains a written description of any activity to be carried out in a particular political subdivision;

(2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;

(3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision;

(4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accord-

BEST COPY AVAILABLE

ance with § 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under § 361.12.

(5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivisions of the State, and except that the provisions of § 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and

(6) Furnishes other information and reports required by the Secretary.

(Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.13 Cooperative programs involving funds from other public agencies.

(a) *Scope of written agreement.* The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:

(1) Describes program goals and the activities to be undertaken to achieve these goals;

(2) Assures only individuals eligible for vocational rehabilitation services will be served;

(3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.

(4) Provides for an annual budget;

(5) Provides that expenditures for vocational rehabilitation services and the administration of these services will be under the direct control and at the discretion of the designated State unit.

(6) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;

(b) *Annual review.* The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.14 Staffing of the State's vocational rehabilitation program.

(a) *General staffing requirement.* The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communication such as manual communication, tactile, oral, and non-verbal communication devices.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.15 Affirmative action plan for handicapped individuals.

(a) [Reserved]

(b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Sections 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

§ 361.16 Staff development.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff development program must include, as a minimum:

(a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;

(b) An orientation program for new staff; and

(c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Section 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of handicapped individuals within the State, including the State's need for rehabilitation facilities, and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must:

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of handicapped individuals, with special reference to the need for expanding services to individuals with the most severe handicaps;

(2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;

(3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;

(4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and

(5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State.

(c) *Annual evaluation.* The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Sections 101(a)(18) and (a)(19) of the Act; 29 U.S.C. 721(a)(18) and (a)(19))

§ 361.18 Policy development consultation.

(a) *General provisions.* The State plan must assure that the designated State unit, or as appropriate, the State unit and any vocational rehabilitation unit of a local agency, seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of individuals and groups. Matters of general policy development and implementation include, but need not be limited to, program planning, development and evaluation; development of legislative and budgetary proposals; assessing research and service proposals; and affirmative action for employment of qualified handicapped individuals. The individuals and groups whose opinions are sought and considered are:

(1) Current or former recipients of vocational rehabilitation services, or as appropriate, their parents, guardians, or other representatives;

(2) Providers of vocational rehabilitation services; and

(3) Others active in vocational rehabilitation.

(b) *Public access.* The State plan must further assure that the State unit establishes and maintains a written description of the methods used to obtain and consider views on policy development and implementation. This description must be available to the public for review and inspection, as well as a report of activities which were actually undertaken in this regard during the previous fiscal year.

(Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.19 Cooperation with other public agencies.

(a) *General provisions.* The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies administering the State's social services and financial assistance programs; other programs for handicapped individuals such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

(b) *Coordination with education programs.* The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.

(c) *Coordination with veterans' programs.* The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.

(d) *Reciprocal referral services with separate agency for the blind.* Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the handicapped individuals in the State, and otherwise cooperate to provide more effective services.

(Section 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General Provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that handicapped individuals within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs which assist handicapped individuals. The State plan must also assure that the State unit will refer handicapped individuals to other appropriate Federal and State programs which might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

(b) *Special information and referral resources.* The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.21 State plan for rehabilitation facilities.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.22 Utilization of rehabilitation facilities.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to handicapped individuals in accordance with the State plan for rehabilitation facilities under § 361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Sections 101(a)(12) and (a)(15) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

§ 361.23 Reports.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

§ 361.24 General administrative and fiscal requirements.

(a) *General provisions.* The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.

(b) *Awards made by State agency.* The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.

(c) *Applicability of 34 CFR Part 74.* The provisions of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart O of 34 CFR Part 74.

(d) *Applicability of Department of Health and Human Services regulations.* Several Department of Health and Human Services regulations apply under this part. These include:

45 CFR Part 19—Limitations on Payment or Reimbursement for Drugs

45 CFR Part 46—Protection of human subjects

45 CFR Part 75—Informal grant appeals procedures (Indirect cost rates and other cost allocations)

BEST COPY AVAILABLE

(Sectio[illegible] and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

§ 361.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Sections 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.31 Eligibility for vocational rehabilitation services.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any handicapped individual who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) *Interim determination of eligibility.* The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Sections 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

(a) *Basic conditions.* The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) *Scope of diagnostic study.* The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

(c) *Specific evaluations.* The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.

(Sections 7(8) and 103(a)(1) of the Act; 29 U.S.C. 706(8) and 723(a)(1))

§ 361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.

(a) *General provision.* The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, and other factors relating to the individual's handicap to employment and rehabilitation needs.

(b) *Scope of thorough diagnostic study.* The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance.

(Sec. [illegible](8) of the Act; 29 U.S.C. 706(8))

§ [illegible] Extended evaluation to determine vocational rehabilitation potential.

(a) *Basic conditions.* The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) *Duration and scope of services.* Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to a handicapped individual for a total period not longer than 18 months.

(c) *Other conditions.* (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in § 361.35(b). Only one 18-month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the handicapped individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(2) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, are provided only if the certification of eligibility required in § 361.35(a) has been executed by an appropriate State unit staff member.

(d) *Review.* The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may be determined to be eligible or ineligible.

(e) *Termination.* The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:

(1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services. In

this case, the procedures described in § 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 363 of this chapter.

(Section 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.35 Certification Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time that the State unit accepts a handicapped individual for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in § 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.

(b) *Certification for extended evaluation to determine vocational rehabilitation potential.* The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in § 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.

(c) *Certification of ineligibility.* (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, there must be a certification dated and signed by an appropriate designated State unit staff member.

(2) The State plan must further assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the procedures for administrative review and fair hearings under § 361.48. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.

(d) *Review of ineligibility determination.* The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligibility determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal.

(e) *Closure without eligibility determination.* The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage his or her participation.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must show the order to be followed in selecting groups of handicapped individuals to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals.

(b) *Priority for severely handicapped individuals.* The State plan must assure that those groups of individuals with the most severe handicaps are selected for service before any other groups of handicapped individuals.

(c) *Disabled public safety officers.* The State plan must also assure that special consideration will be given to those handicapped individuals whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Section 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

§ 361.37 Services to civil employees of the United States.

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other handicapped individuals.

(Section 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to handicapped American Indians residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services to handicapped American Indians on reservations served by a special tribal program under Section 130 of the Act, if the population estimates used for determining the State's allotment include the population of Indians residing on these reservations.

(Section 101(a)(20) of the Act; 29 U.S.C. 721(a)(20))

§ 361.39 The case record for the individual.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

(a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

(b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;

(c) Documentation supporting any determination that the handicapped individual is a severly handicapped individual;

(d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

(e) An individualized written rehabilitation program as developed under § 361.40 and § 361.41 and any amendments to the program;

(f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the handicapped individual is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

(g) Documentation supporting any decision to provide services to family members;

(h) Documentation relating to the participation by the handicapped individual in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

(i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

(j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other

-81-

BEST COPY AVAILABLE

BEST COPY AVAILABLE

ma[illegible] concerning any information released about the handicapped individual with his or her written consent;

(k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

(l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;

(m) Documentation concerning any action and decision involving the handicapped individual's request for an administrative review of agency action or fair hearing under § 361.48; and

(n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with § 361.40(d).

(Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.40 The individualized written rehabilitation program: Procedures.

(a) *General Provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the handicapped individual or, as appropriate, his or her parent, guardian or other representative. The State unit must provide a copy of the written program, and any amendments, to the handicapped individual or, as appropriate, his or her parent, guardian, or other representative and must advise each handicapped individual, or his or her representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 361.35(a) or certification for extended evaluation to determine rehabilitation potential under § 361.35(b).

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each handicapped individual, or, as appropriate, his or her parent, guardian on other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program because of a determination that the handicapped individual is not capable of achieving a vocational goal and is therefore no longer eligibile, or if in the case of a handicapped individual who has been provided services under an extended evaluation of vocational rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible, the following conditions and procedures will be met or carried out.

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under § 361.35(c) is then executed; and

(3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.

(Section 101(a)(9) of the Act; 29 U.S.C. 721(a)(9))

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that the individualized written rehabilitation program places primary emphasis on the determination and achievement of a vocational goal, and as appropriate includes, but is not necessarily limited to, statements concerning:

(1) The basis on which the determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual;

(3) The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives;

(4) The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(6) The views of the handicapped individual, or, as appropriate, his or her parent, guardian, or other representative, concerning his or her goals and objectives and the vocational rehabilitation services being provided;

(7) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the handicapped individual in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs; and the extent to which these similar benefits have been used;

(8) An assurance that the handicapped individual has been informed of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of State unit action, fair hearing or review by the Secretary under § 361.48;

(9) Where appropriate, assurance that the handicapped individual has been provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act;

(10) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(11) Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.

(b) *Coordination with education agencies.* When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.

(Sections 101 (a)(9) and (a)(11) of the Act; 29 U.S.C. 721 (a)(9) and (a)(11))

BEST COPY AVAILAB

361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) *Scope of services.* The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;

(5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when postemployment services are being provided. Maintenance covers a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

(6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting handicapped individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.

(c) *Special requirements.* In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under § 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.

(Sections 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

§ 361.43 Individuals determined to be rehabilitated.

(a) *Minimum requirements.* The State plan must assure that an individual determined to be rehabilitated, must have been, as a minimum:

(1) Determined to be eligible under § 361.35(a);

(2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

(3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under § 361.40 and § 361.41; and

(4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services when necessary to assist an individual to maintain suitable employment

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.44 Authorization of services.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Sections 12(c) and 101(a)(6) of the Act 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Standards for facilities and providers of services.

(a) *General provisions.* The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.

(b) *Rehabilitation facility standards.* The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968 and, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as amended, and its implementing standards 41 CFR Part 101-19.6 et seq.

(c) *Rehabilitation facility personnel and providers of services.* The Secretary exercises no authority concerning the selection, method of selection,

BEST COPY AVAILABLE

tenure of [illegible]ce, or compensation of any individual employed in any facility or personnel utilized in providing service.

(Sections 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

§ 361.46 Rates of payment.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.47 Participation by handicapped individuals in the cost of vocational rehabilitation services.

(a) *Financial need.* (1) There is no Federal requirement that the financial need of a handicapped individual be considered in the provision of any vocational rehabilitation services.

(2) If the State unit chooses to consider the financial need of handicapped individuals for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all handicapped individuals in similar circumstances.

(3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:

(i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under § 361.34;

(ii) Counseling, guidance, and referral services; and

(iii) Placement.

(b) *Consideration of similar benefits.* (1) The State plan must assure that, in all cases, the State unit gives full consideration to any similar benefits available to a handicapped individual, or to members of a handicapped individual's family, under any program to meet, in whole or in part, the cost of any vocational rehabilitation services except the following:

(i) Evaluation of vocational rehabilitation potential except as provided under paragraph (b)(4) of this section;

(ii) Counseling, guidance and referral;

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, which are not provided in institutions of higher education (§ 361.42(a)(4));

(iv) Placement; and

(v) Post-employment services consisting of the services listed under paragraphs (b)(1) (i)–(iv) of this section.

(2) The State plan must assure that the designated State unit gives full consideration to any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance unless it would significantly delay the provision of services to an individual;

(3) The State plan must also assure that when an individual is eligible for similar benefits, these benefits must be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(4) The State plan must also assure that the State unit gives full consideration to any similar benefits available to a handicapped individual being provided an extended evaluation of vocational rehabilitation potential in a manner consistent with paragraphs (b)(1) through (b)(3) of this section.

(Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

§ 361.48 Appeal procedures.

(a) *Administrative review and fair hearing.* The State plan must assure that when an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, he or she may file a request for an administrative review and a redetermination of that action by the supervisory staff of the designated State unit. The State plan must also provide that an individual, who is dissatisfied with the finding of this administrative review, is given an opportunity for a fair hearing before the State unit director or his designee.

(b) *Additional requirements and procedures in connection with an individualized written rehabilitation program.* (1) When an administrative review and fair hearing have been completed with regard to any decision or determination made in connection with an individualized written rehabilitation program, the final decision made on the basis of the fair hearing must be made in writing by the State unit director. The procedures established by the State unit in this regard must provide that the responsibility for making the final decision may not be delegated to any other officer or employee of the State unit.

(2) When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing under paragraph (a) of this section, the individual may request the Secretary to review the decision. When this request is made, the Secretary or the Secretary's designee reviews the State unit director's decision and makes recommendations to the director concerning action to be taken to resolve the issue and dispose of the matter. Within 60 days of receiving these recommendations, the director advises the handicapped individual and the Secretary of the final disposition of the matter.

(c) *Informing affected individuals.* Each applicant or individual being provided vocational rehabilitation services must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(Sections 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

§ 361.49 Protection, use and release of personal information.

(a) *General provisions.* The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;

BEST COPY AVAILABLE

(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) *Release to involved individuals.* (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

(f) *Release to the Secretary or the Secretary's designee.* Where the individual or his or her representative has requested the Secretary to review the final decision of the State Unit Director under § 361.48, the State unit, upon request of the Secretary or the Secretary's designee, will provide to the Secretary or the Secretary's designee a complete and officially certified copy of the case record of the individual, including the record and transcripts of the Fair Hearing decision made by the State Unit Director.

§ 361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.

(a) *General provisions.* The State plan may provide for establishing small business enterprises operated by severely handicapped individuals and may also provide for management services and supervision for these enterprises. "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by severely handicapped individuals. "Managment services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.

(b) *Special policies.* If the State plan provides for management services and supervision, it must assure that the State unit maintains:

(1) A description of the types of small business enterprises to be established;

(2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;

(3) A description of the policies governing the management and supervision of the program;

(4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and

(5) An assurance that only severely handicapped individuals will be selected to participate in this supervised program.

(c) *Set-aside funds.* If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purpose for which funds are set aside. Funds may be used only for small business enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.51 Scope of State unit program: Establishment of rehabilitation facilities.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and

(e) Any rehabilitation facility established under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

BEST COPY AVAILABLE

§ 361.52 [illegible]e of State unit program: Con[illegible]ction of rehabilitation facilities.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;

(e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;

(f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set forth in the application; and

(g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables and complaint and enforcement procedures.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one handicapped individual. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.54 Scope of State unit program: Telecommunications systems.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of handicapped individuals, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.55 Scope of State unit program: special materials for blind individuals and for deaf individuals.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual readout. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of handicapped individuals from ethnic groups which represent substantial segments of the population of the State.

(Sections 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721 (a)(6) and 723(b))

§ 361.56 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for handicapped individuals under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.58 Periodic review of extended employment in rehabilitation facilities.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those handicapped individuals who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Section 101(a)(16) of the Act; 29 U.S.C 721(a)(16))

Subpart C—Financing of State Vocational Rehabilitation Programs

SOURCE: 46 FR 5530, Jan. 19, 1981, unless otherwise noted.

FEDERAL FINANCIAL PARTICIPATION

§ 361.70 Effect of State rules.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Section 111(a) of the Act; 29 U.S.C. 731(a))

§ 361.71 Vocational rehabilitation services to individuals.

(a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specifed vocational rehabilitation services to handicapped individuals as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of a handicapped individual or to be of benefit in terms of his or her employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)

(b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the costs of native heal

BEST COPY AVAILABLE

ing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve a handicapped individual's vocational rehabilitation objective.

(c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under § 361.72) for any one handicapped individual or for a group of handicapped individuals under § 361.75.

(Sections 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

§ 361.72 Management services and supervision for small business enterprises for serverely handicapped individuals.

(a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for severely handicapped individuals, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.

(b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set-aside by the State unit from the proceeds of the operation of small business enterprises for the most severely handicapped individuals under its management and supervision.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.73 Establishment of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:

(1) Acquisition of existing buildings, and where necessary, the land in connection therewith;

(2) Remodeling and alteration of existing buildings;

(3) Expansion of existing buildings;

(4) Architect's fees;

(5) Site survey and soil investigation;

(6) Initial and additional fixed or movable equipment of existing building;

(7) Initial and additional staffing of rehabilitation facilities; and

(8) Such other direct expenditures as are appropriate to the establishment project.

(b) Federal financial participation is not available in any expenditure:

(1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than $300,000.

(2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;

(3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the building prior to its remodeling or alteration;

(4) For the expansion of an existing building which has not been completed in all respects;

(5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of usable space, will be greater than twice the size of the original existing building; or

(6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

(c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be 80 per cent.

(d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sec. 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

§ 361.74 Construction of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:

(1) Acquisition of land in connection with the construction of a rehabilitation facility;

(2) Acquisition of existing buildings;

(3) Remodeling, alteration or renovation of existing buildings;

(4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;

(5) Architect's fees;

(6) Site survey and soil investigation;

(7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;

(8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and

(9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.

(b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

(c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Sections 7(1), 12(c), and 103(b) of the Act 29 U.S.C. 706(1), 711(c) and 723(b))

§ 361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of handicapped individuals but which are not related directly to the rehabilitation of any one handicapped individual. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Sections 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.76 State and local funds.

For purpose of this part, "State or local funds" means:

(a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under § 361.13.

(b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial partici-

BEST COPY AVAILABLE

p[illegible]n will not be available in expenditures that revert to the donor's use or facility;

(c) Funds set aside pursuant to § 361.72(b); or

(d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.77 Shared funding and administration of joint projects or programs.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with § 361.11. Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Sections 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

§ 361.78 Waiver of Statewideness.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (§ 361.12), Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Sections 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))

104

Attachment C
(Part 2)

ABSTRACT AND SELECTED EXCERPTS
FROM THE
REHABILITATION SERVICES MANUAL
USED BY
STATE VOCATIONAL REHABILITATION AGENCIES

Note: This information is provided to give a brief summary of the Vocational Rehabilitation System's processes and procedures through a summary of the codes used as a client moves through the system. A comparison of the definition of severely disabled found in 34 CFR: 361, the regulations for State VR Services, and the definition of developmental disability found in P.L. 98-527, The New DD Act, is included.

Attachment C

ABSTRACT AND SELECTED EXCERPTS FROM REHABILITATION SERVICES MANUAL USED BY STATE VOCATIONAL REHABILITATION AGENCIES

Eligibility for vocational rehabilitaiton (VR) services is based upon: (1) the presence of a physical or mental disability; (2) the existence of a substantial handicap to employment; and (3) a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

There are 15 status classifications under the caseload status coding structure. Status 00 (Referral) represents any disabled person applying for or referred for services at a VR agency. The definition of "referrals" used does not include the "long lists of persons who are screened out by criteria established in cooperative agreement between the vocational rehabilitation agency and another agency." Caseworkers are asked to record all other referrals regardless of whether the client is perceived as likely to become a successful closure. Referrals are also to be recorded when closed immediately as not eligible for services.

Two factors reported under referral should be examined: the disability (02) and the source of referral (05). The disabling condition code combines disability (designated in first two digits) with cause (designated in last digit) in a three digit code. (See Appendix I for specific codes) Disability is reported at two different stages in the VR process. First, the "Disability as Reported" is entered at the time of referral. This reported disability may not constitute the major or secondary disabling condition actually diagnosed, described and coded when the referral process is completed. At the time of referral, the code "X" may be used to designate an unknow variable such as the cause of, extent, or type of a disabling condition. In cases that involve two disability codes, a distinction is made between condition and cause and the code related to condition is used since a condition would be more directly associated with a work limitation. The two-digit codes used to designate "original" source of referral are provided in Appendix II. Whenever possible, referrals should be designated by the agency rather than by the individual making the referral.

Several codes are used to designate Work Status, i.e., what the individual was actually doing during the "week" prior to referral. The code "Y" (Not available) is used for individuals with whom a personal contact could not be established or the information is not otherwise available except when the individual has been certified for either extended evaluatin (06) or VR services (10). A person who did any work during the "week" (except when paid "in kind" or as a trainee or worker in the non-competitive labor market) is classified as working in one of the first six categories (codes 1 through 6). Any person not meeting this criterion should be classified as not working (codes 7 and 8) or as a trainee or worker in the non-competitive labor market (code 9). When a person's work status appears to fall within two or more of these categories, the principal work status is used. A wage or salaried worker refers to an individual who did any work during the "week" for a private employer or for the government (Federal, State, or local) for wages, salary, commission, tips, or piece-rates. This does not include working for pay in-kind (code 8); working for one's self or in one's own business (code 3); working in State-agency-managed business enterprises (BEP) (code 4); working as a homemaker (code 5); working on a family farm or in a family business for which there are no wages (code 6); working as a voluneteer (code 8); or working or being trained in the non-competitive labor market (code 9).

The nine codes found under "Work Status" are defined as follows:

1 Competitive labor market refers to work for wages, salary, commission, etc. (including wage earners on farms but not workers in sheltered workshops).

2 Sheltered workshop refers to all persons who work for wages or salary in a sheltered workshop operated by a nonprofit organization.

3 Self-employed (except BEP) refers to work for profit or fees in one's own business, farm, shop, or office. Persons hired to manage a business or farm, officers of corporations, and salespersons working for commission are not included in this classification while sharecroppers are.

4 State-agency-managed business enterprises (BEP) refers to vending stands or other small businesses operated by the severely disabled

under the management and supervision of a State agency. This includes home industry, farming, and other enterprises.

5 Homemaker refers to persons whose principal activity is keeping house for their families.

6 Unpaid family worker refers to persons who work without pay on a family farm or in a family business operated by one or more members of their own family.

7 Student refers to persons who are attending school in the "week" and cannot be classified in one of the working categories.

8 Other refers to person not in the categories above. Examples include (a) persons just out of school who have been unable to secure jobs; (b) persons unable to retain or obtain work; (c) persons not able to perform their homemaking duties; (d) persons confined in institutions; and (e) persons receiving only pay "in kind".

9 Trainee or worker (non-competitive labor market) refers to persons participating in work experience, work training, or work adjustment programs other than in sheltered workshops.

The applicant status (02) is used as soon as an individual referred for services signs a document or submits a letter requesting VR services. If the request for VR services is denied, the applicant must be notified in writing. While the individual is in this status, information is gathered to determine if the individual is eligible or ineligible for VR services. If the counselor is unable to make such a decision based on the information available, he/she may place an applicant in extended evaluation (Status 06) for up to 18 consecutive months.

Extended evaluation is used to explore rehabilitation potential. Applicants are certified for extended evaluation when the counselor is unable to determine eligibility in terms of (1) the presence of a physical or mental disability, (2) the presence of a substantial handicap to employment, or (3) the determination that the individual would not likely benefit from VR services in terms of employability. When an individual is certified for extended evaluation, the development of an individualized written rehabilitation program (IWRP) is required. (Note: This status is seldom used by State VR counselors.) At or prior to the expiration of the 18 month period, the client can be moved to Status 10 (Eligible) if determined able to benefit from VR services in terms of employability or to Status 08 (Not Eligible) if determined unlikely to benefit in terms of employability.

Status 08 (Not Eligible) closures represent all individuals who were in an active caseload under the referral, applicant, or extended evaluation statuses and were not accepted for VR services. When a client is not accepted for extended evaluation or for VR services, the VR counselor must indicate whether the client was closed from the referral (00) or applicant (02) status. The codes included under "Not Accepted: Reason" are:

1 unable to locate or contact; or moved
2 handicap too severe or unfavorable medical prognosis
3 refused services or further service
4 death
5 client institutionalized
6 transferred to another agency
7 failure to cooperate
8 no disabling condition
9 no vocational handicap
Y other

A certificate of ineligibility, accompanied by case documentation detailing reasons for closure, is required except when the client becomes unavailable for services. It is also necessary to indicate whether or not the individual was closed previously as either rehabilitated or not rehabilitated from an active VR caseload within 36 months of the current referral. The number of months since the previous closure must be recorded.

At the completion of the referral process, codes for the major and secondary disabling conditions are used to provide information on the physical and mental condition(s) contributing to the individual's employment handicap. This provides data on multiple impairments. Here, the code "Y" is used to designate unknown variables. The most recent documents prepared by physicians or medical records submitted by hospitals or clinics are used to determine the major and secondary disabling conditions. "The major disabling condition is the major defect, impairment, or disease most significantly responsible for the client's work limitation." The secondary disabling condition is the second impairment, residual defect, or other disabling condition that contributes to the employment handicap.

Certain statuses are used to standardize the reporting of an individual's progress and to provide management information. Unfortunately, "there are no national reporting requirements for applying these statuses to cases in extended evaluation." However, large-volume agencies desiring to establish case progress identification for evaluation cases can prefix the following statuses with a "6" to signify status changes during extended evaluation.

Status 10 (Eligible) designates an individual who has been certified as eligible for VR services, i.e., an active case for which a comprehensive case study and diagnosis is being completed, an individualized written rehabilitation program (IWRP) is being developed, and the appropriate services are being planned, including "follow-up prior to case closure to insure the suitability of employment." The IWRP, which formulates and plans the rehabilitation services necessary to address the client's specific problems, should be developed jointly by the counselor and the client. The service plan must be clearly outlined for the client. The client is then placed in Status 12 (Rehabilitation Plan Completed), indicating the the IWRP had been written and approved but service delivery has not actually begun.

As soon as arrangements for service delivery are actually initiated, the client is placed in one of the "in-service" statuses: 14 (Counseling), 16 (Restoration), or 18 (Training). These service statuses provide a way to designate the client's progress to show the kind or kinds of services given to prepare the client for employment. When two or more services are designated, the client's status is identified by the services which will be provided for the longer period of time or, when the services are provided for the same period of time, by the service felt to be the most important. Status 14 (Counseling and Guidance Only) means the approved IWRP outlines the need for only counseling, guidance and placement services. Clients are placed in Status 16 (Physical and Mental Restoration) when they are receiving any physical or mental restoration services. They remain in this status until the restoration services are completed or terminated. Status 18 (Training) is used when the client is receiving academic, business, vocational, or personal and vocational adjustment training from any public or private source.

For each type of service provided or arranged for by the vocational rehabilitation agency, the caseworker must indicate whether it was provided entirely with cost (code 1), entirely without cost (code 2), or a portion with and a portion without cost to the VR agency (code 3). A brief description of the major VR services follows.

Diagnostic and Evaluation includes diagnostic and evaluation services and other services such as transportation and hospitalization of individuals for diagnostic and evaluation purposes. Medical, psychological, social, and vocational diagnostic and evaluation services authorized to determine eligibility or to ascertain the nature and scope of rehabilitation services needed are included.

Restoration (Physical or Mental) includes those medical and medically related services which are necessary to correct or substantially modify a physical or mental condition.

Training includes all training and training materials provided the individual and has been sub-categorized to identify the type of training, i.e., college or university, other academic (elementary or high school), business school or college, vocational school, on-the-job, personal and vocational adjustment, and miscellaneous. When a client receives several types of training, each type should be recorded. If a client's situation could possibly be classified under several types of training, it is up to the discretion of the VR counselor to determine which type of training predominates.

Maintenance includes any service provided to cover basic living expenses so that an individual can fully benefit from the other VR services provided.

Other Services include services such as reader and interpreter services, occupational tools and equipment, initial stocks, licenses, and transportation.

Services to Other Family Members include services provided to the family members of the handicapped client for the purpose of contributing substantially to the rehabilitation of the handicapped individual.

Status 20 (Ready for Employment) is used upon completion of a client's "preparation for employment." It denotes that a client is ready to accept a job or has accepted a position but has not begun employment yet. This status is of particular importance since it constitutes VR's "job ready" population. When a client accepts and has begun a job, he/she is moved to Status 22 (In Employment). The client "must be observed in this employment for a minimum of 30 days prior to being closed as rehabilitated (Status 26) to insure adequacy of employment in accordance with the needs and limitations of the individual." Homemakers and unpaid family workers who meet the observation criteria are included in this status. Status 24 (Service Interrupted) is used whenever services are interrupted while in one of the other statuses (14, 16, 18, 20, or 22). This status is changed when the client goes back to the previous status or the case is closed.

A client remains in an active caseload until he/she has completed the individualized written rehabilitation program (IWRP) or until the IWRP has been terminated. When a client is moved to Status 26 (Closed Rehabilitated) it indicates that as a minimum the client: 1) was determined eligible for VR services, 2) received appropriate diagnostic and related services, 3) had a program for VR services formulated, 4) completed the program to the extent possible, 5) was provided counseling as essential rehabilitation service, and 6) was determined to be suitably employed for a minimum of 60 days.

Cases closed with Status 28 (Closed Other Reasons After IWRP Initiated) "must have met the criteria (1), (2), and (3) above, and at least one of the services provided for by the program must have been initiated, but for some reason one or more of criteria (4), (5), and (6) above were not met (closures for Statuses 14 through 24)." This includes cases for which the IWRP calling for counseling and guidance only was written, approved, and initiated. Status 30 (Closed Other Reasons Before IWRP Initiated) is used for cases that were accepted for rehabilitation services but the services were never actually initiated. Both Statuses 28 and 30 include cases transferred to another State rehabilitation agency, within or outside of the State.

Appendix I

CODES AND CLASSIFICATIONS FOR PERSONS WITH SEVERE DISABILITIES

The cases of individuals with severe disabilities fall into any of the following four categories. (Reference: Rehabilitation Services Manual)

1. People with major disabling conditions listed below, as qualified in some instances.

RSA Disability Codes	
100-149	Blindness and visual impairments
200-229	Deafness and hearing impairments
300-379	Orthopedic impairments
355,375,395	Muscular dystrophy
356,376,396	Multiple sclerosis
400-439	Loss of one or more extremities
500	Psychotic disorders: if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the following description for moderate or severe.

Mild: Minor distortions of thinking with little or no disturbance in activities of daily living. With provisions of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Able to accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress, may require follow-up supervision, guidance or support. Includes one-time, short-term institutionalized discharges doing well on medication.

Moderate: Definite disturbances of thinking with definite but mild disturbances in behavior. Includes hospital discharges who require daily medication to avoid rehospitalization. With provision of rehabilitation services, capable of maintaining themselves in the community and of engaging in low-stress competitive employment, but at least initially requiring continuing supervision, guidance, motivation and support. Misunderstanding of instructions, activity, self-isolation, or over-reaction in gesture, speech or emotion may be displayed during the VR process and may cause concern to people in the work milieu.

Severe: (a) Severe disturbances of thinking and behavior that entail potential harm to self or others; (b) or, in the extreme, severe disturbances of all components of daily living, requiring constant supervision and care. Persons in (a) with the provision of rehabilitation services may be capable of maintaining themselves in the community and to engage in limited or sporadic productive activity only under continuing supervision in sheltered or protective environment, including halfway houses. They are unable to communicate readily and have difficulty differentiating between their fantasies and reality. Their behavior is disruptive and often menacing to others, marked by shouting, vulgarity, carelessness of dress and excretory functions. These symptoms and possible suicidal attempts necessitate continuing observation, professional intervention and medication, especially during early stages of the rehabilitation process.

51C Psychoneurotic disorders: if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the description of moderate or severe following.

Mild: Stress reactions to daily living without substantial loss of personal or social efficiency. With the provision of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Can accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress will require supervision, guidance and support after placement.

Moderate: Stress reactions which modify patterns of daily living. Can maintain themselves in the community and perform adequately in low-stress competitive employment with the provision of rehabilitation services. May require medication and continuing supervision, motivation and support at least during early post-placement. Their fears, indecision, loss of interest or occasional odd behavior will be evident during the rehabilitation process, and may moderately interfere with job performance and other worker's activities in employment when stressful situations arise.

Severe: Stress reactions to daily living that result in continuing regression and tissue-organ pathology. Capable of productive work but only under sheltered, non-competitive conditions in a highly structured or protective environment, at least initially. May require continuing medication. Bizarre and disruptive behavior, loss of interest in activities of daily living, problems with memory and concentration will be evident in the counseling process. These symptoms and the client's interference with other workers necessitate continuing supervision, guidance, motivation and support by professional staff in the work situation. Conversion reactions, poor eating and cleanliness habits may create considerable health problems.

532,534 Mental retardation - moderate and severe (Note: Mild mental retardation (Code 530) is not considered to be a category qualifying for classification as severely disabled.)

The Classification and Coding of Mental Retardation

The definition of mental retardation used by RSA was developed in 1961 by the American Association of Mental Deficiency. This reads as follows:

Mental retardation refers to sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. This may be reflect in impairment of:

a. Maturation: rate of sequential development of self-help skills of infancy and early childhood.

b. Learning: the facility with which knowledge is acquired as a function of experience.

c. Social Adjustment: the degree to which the individual is able to maintain himself independently in the community and in gainful employment as well as by his ability to meet and conform to other personal and social responsibilities and standards set by the community.

As so defined, sub-average general intellectual functioning refers to performance on an individual test of intelligence which is [illegible] one standard deviation below the mean for the appropriate age group, or an IQ of about 85 on such commonly used tests as the Wechsler-Bellevue and the Stanford Binet. It is, however, important to note that a measured intelligence quotient in and of itself is insufficient diagnostic evidence of the existence of mental retardation, and that the presence of maladaptive behavior associated with subnormal intellectual functioning must also be established. It is this factor of maladaptive behavior which is particularly important in determining whether an individual who achieves an IQ in the 70-85 range may or may not be classified as mentally retarded, since many people in this borderline area may neither experience any particular problems of adjustment nor demonstrate any evidence of maladaptive behavior.

It is the behavorial component of mental retardation rather than the measured intelligence quotient which is more meaningful in determining the individual's need for vocational rehabilitation services as well as his or her ultimate employment potential on the completion of such services. At the same time, it must be realized that the IQ can be of great importance to the counselor, especially in evaluating his/her client's readiness for academic training. The IQ should be obtained on the basis of an appropriate individual intelligence test administered by a qualified psychologist in all cases where the existence of mental retardation is suspected.

As an indicator of severity of retardation, impairment in adaptive behavior is used as the basic criterion for classifying persons with mental retardation into three levels of functioning: Mild, Moderate, and Severe. Those sometimes termed profoundly retarded are generally found in institutions, where they must receive continuing care and supervision, are incapable of gainful employment and thus not suitable candidates for vocational rehabilitation.

For coding purposes, the three levels may be classified as follows:

Mild: Persons who, with the provision of appropriate rehabilitation services, can become capable of independent living in the community and engage in competitive employment. Generally, they will require supervision and guidance only under conditions of particular social or economic stress. (Code as 530) Note: Persons in this group are not considered to have severe disabilities.

Moderate: Persons capable of maintaining themselves in the community and performing adequately in low-demand competitive employment, but who will require continuing supervision and assistance in the management of personal affairs. (Code as 532)

Severe: Persons capable of productive work but only under sheltered, non-competitive conditions in a protective environment. (Code as 534).

It is realized that there are problems inherent in the practical application of a classification system based on adaptive behavior. However, while there are no objective scales which will determine with reasonable objectivity the functioning level of adaptive behavior to which a person with mental retardation should be assigned, such measures as the Vineland Social Maturity scale and others may be helpful in this regard. It will then be necessary for the counselor, in collaboration with the psychologist, to make a judgment on the proper classification of his or her client, based on their personal observations of the client, a careful review of the case history together with the results of a comprehensive medical-vocational evaluation, reports from schools and other agencies which may have been involved in the case, and such other sources of information as may be available.

Other Classifications

(From the Rehabilitation Services Manual)

602	Leukemia and aleukemia
616	Cystic fibrosis
630	Epilepsy - if not seizure-free for two years
680	Cleft palate and harelip with speech imperfections
685	Aphasia resulting from intracranial hemorrhage, embolism, or thrombosis (stroke)

2. Individuals who, at any time in the vocational rehabilitation process, had been Social Security Disability Insurance (SSDI) beneficiaries.
3. Individuals who, at any time in the vocational rehabilitation process, had been recipients of Supplemental Security Income (SSI) payments by reason of blindness or disability.
4. Other individual cases with documented evidence of loss and limitation meeting the citeria of Functional Limitation Factors. In this grouping are those conditions, whether a single disability or a combination of disabilities, which when presented in terms of clinical description and functional limitations, the State agency (counselor/medical consultant) can determine:

   A. There exists substantial loss of functional capacity and restriction of activity attributable to medical factors, such that the individual:

      1. Is unable to make use of public bus or train, or
      2. Is unable to perform sustained work activity for six hours or more, or
      3. Has disfigurement or deformity so pronounced as to cause social rejection, or
      4. Speech is unintelligible to non-family members, or
      5. Is unable to climb one flight of stairs or walk 100 yards on the level without pause, or
      6. Has loss of manual dexterity or coordination sufficient that he is unable to button buttons, wind a watch or write intelligibly; and

   B. The individual will normally require multiple vocational rehabilitation services over an extended period of time.

Comparison of Definitions

Severely Handicapped and The Functional Definition of Developmental Disability

34 CFR: 361, State VR Services

"Severely handicapped individual" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, or other spinal cord conditions, sickle cell anemia, specific learning disability, and endstage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

P.L. 98-527: The New DD Act

The term "developmental disability" means a severe, chronic disability of a person which-

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age twenty-two;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care,
(ii) receptive and expressive language,
(iii) learning,
(iv) mobility,
(v) self-direction,
(vi) capacity for independent living,
(vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

Attachment D

THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Washington, D. C. 20210

A Review of the

"Carl D. Perkins Vocational Education Act"

Public Law 98-524

Purpose

"To assist the States to expand, improve, modernize and develop quality vocational education programs in order to meet the needs of the Nation's existing and future work force for marketable skills and to improve productivity and promote economic growth."

In addition, the Statement of Purpose sectionof the law states, "It is the purpose of this Act to assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially individuals who are disadvantaged, who are handicapped, men and women entering nontraditional occupations, adults who are in need of training and retraining, ...and individuals who are incarcerated in correctional institutions."

Definitions

The term "vocational education" means "organized educational programs which are directly related to the preparation of individuals in paid or unpaid employment in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields, and in other occupations, requiring other than a baccalaureate or advance degree..."

Vocational education can be delivered at the secondary, post-secondary or adult level. Secondary level programs can take place at both public and private high schools, vocational-technical schools and residential programs. Post-secondary level programs can take place at junior or community colleges and area vocational centers (these may also be secondary level programs). And, adult programs are generally for persons who have already entered the labor market or who are unemployed or who have left high school and who are not part of an established post-secondary program. Adult programs can take place at sheltered workshops, adult education programs and trade or technical schools.

The term "handicapped" means "individuals who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired or other health impaired persons, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance."

The term "community based organization" means "any such organization of demonstrated effectiveness described in section 4(5) of the Job Training Partnership Act." Section 4(5) of JTPA states "a community based organization means ...vocational rehabilitation organizations, rehabilitation facilities (as defined in Section 7(10) of the Rehabilitation Act of 1973, agencies serving youth, agencies serving the handicapped..." Community based organizations are eligible grant recipients for certain vocational education funding. (see Part A of Title III)

Titles

The "Carl D. Perkins Vocational Education Act" (P.L. 98-524) takes effect immediately. Draft or proposed regulations implementing the Act were published in the Federal Register on Friday, January 25, 1985.
It's important to remember that this law establishes a framework (authorization) for the distribution of funds to state and local education agencies and others for the provisioning of vocational education programs. No actual money is appropriated by this ACT. Each year the Congress will determine how much money to appropriate for each Title and program. Here are the 1985 authorization levels for each Title.

- Title I, II and IV can get $835,300,000
- Part A of Title III can get $15,000,000
- Part B of Title III can get $32, 000,000
- Part C of Title III can get $35,000,000
- Part D of Title III can get $1,000.000
- Part E of Title III can get $20,000,000
- Parts A, B, C, D and F of Title IV can get 2% of $835,000,000

Title I, "Vocational Education Assistance to the States" contains two parts (A&B). Part A sets forth the criteria for the "Allotment and Allocation" of funds. And, Part B defines the "State Organization and Planning Responsibilities."

Under Part A of Title I, the total amount of money alloted to a state is determined by the ratio of persons aged 15 to 19, 20 to 24, 25 to 65 to a fixed percentage. In addition, an assurance is made that no state shall receive in any fiscal year less than the total amount of payments made during fiscal year 1984. And, it is made clear that "No funds may be realloted for any use other than the use for which they were appropriated."

Within the state, Section 102 of Part A requires that 57% of the allotment must be used for activities described in part A of Title II (set asides for students with disabilities are included here). And, the remaining 43% for vocational education program improvement, innovation and expansion.

Under Part B of Title I, administrative requirements are described. The Act requires the continuation of State Councils on Vocational Education. Each state councils shall be composed o 13 members. Seven (7) shall come from the private sector. And, six (6) "who are representatives of secondary and postsecondary vocational institutions (equitably distributed among such institutions), career guidance and counseling organizations within the state, individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations (including women, the disavantaged, the handicapped, individuals with limited English proficiency and minorities) and of whom one member shall be representative of special education." In addition, special consideration for membership is to be given to person serving on other state councils established under related Federal Acts (i.e. State Advisory Panels on Special Education -- P.L. 94-142; State Developmental

Disabilities Councils -- D.D. Act).

Each state council on vocational education shall advise the state board of vocational education on the development of the state plan; and, advise the governor, the business community and the general public "concerning policies that the state should pursue to strengthen vocational education (with particular attention to programs for the handicapped)..."

Also described under Part B of Title I is the "state plan." The initial state plan will be in effect for three years. Subsequently, each succeeding state plan will exist for a two year period, with such annual revisions as the state board determines to be necessary

One of six (6) basic features of the state plan (Section 113) is a requirement that it "assess the special needs of groups of individuals specified in section 201 (b) for access to vocational education and vocational services in terms of labor market needs." Section 201(b) lists six categories of persons. Leading the list is handicapped persons.

Further, each state plan shall provide assurances and a description of the manner in which the state board will comply with the criteria set forth in sections 203 (set aside provision for handicapped students) and 204 (safeguards for handicapped students -- see below). It shall provide assurances that the state will distribute 100% of the funds available for both handicapped and disadvantaged (10% and 22% setasides, respectively) directly to local programs. In addition, the state plan will eatablish appropriate measures for evaluating the effectiveness of programs for the handicapped; and, describe the methods proposed for joint planning and coordination of programs carried out under this Act with JTPA, the "Education of the Handicapped Act" and the Rehabilitation Act of 1973.

Title II, "Basic State Grants for Vocational Education" also contains two parts (A&B). Part A describes the special features designed to increase "Vocational Education Opportunities" for special populations (handicapped, disadvantaged, etc.). And, Part B sets forth the criteria for "Vocational Education Program Improvement, Innovation and Expansion."

Under Part A of Title II, 57% of the basic state grant must be used for the following special populations:

1.) 10% for handicapped persons
2.) 22% for disadvantaged
3.) 12% for retraining adults
4.) 8.5% for single parents
5.) 3.5% to eliminate sex bias
6.) 1% for offenders

Total = 57%

The 10% set aside for handicapped individuals can only be used "for expenditures limited to supplemental of additional staff, equipment, materials and services not provided to other individuals in vocational education that are essential for handicapped individuals to participate in vocational education" (excess costs feature). In addition, section 201 of Part A states, "If the conditions of handicapped students require a separate program, each state may use such funds for the Federal share of the costs of the services and activities in separate vocational education programs for handicapped individuals which exceed the average per-pupil expenditure for regular services and activities." In other words, the practice of using the 10% set aside monies for the full cost of segregated programs is now prohibited.

Section 203 of Part A also requires that the 10% set aside be matched by the state; and, thatthe combined monies be used only to pay the excess costs of delivering vocational education programs to handicapped individuals. Specifically, the Act states, "50% (of the Federal money) shall be allocated ...to each eligible recipient." The other 50% represents the state match.

Section 204 of Part A sets forth criteria for services and activities for serving handicapped individuals. It states, "the state Board of vocational education shall provide assurances that:

1.) equal access will be provided to handicapped individuals in recruitment, enrollment and placement activities;

2.) equal access will be provided to handicapped individuals to the full range of vocational programs (available to all others), including occupationally specific courses of study, cooperative education and apprenticeship programs; and,

3.) vocational education programs and activities for handicapped individuals will be provided in the least restrictive environment in accordance with section 612 (5) (B) of the Education of the Handicapped Act and will, whenever appropriate, be included as a component of the individualized education plan (IEP)."

In addition, each local education agency "shall provide information to handicapped students and parents of such students concerning the opportunities available in vocational education at least one year beore the studens enter the grade level in which vocational education programs are generally first available in the state, but in no event later than the beginning of the ninth grade, together with the requirements for eligibility for enrollment in such vocational education programs."

Section 204 continues, "each handicapped student who enrolls in vocational education programs shall receive:

1.) assessment of interests, abilities and special needs of such students with respect to completing successfully the vocational education program;

2.) special services, including adaptation of curriculum, instruction, equipment and facilities, designed to meet the needs identified above (item #1);

3.) guidance, counseling and career development activities conducted by professionally trained counselors who are associated with the provision of such special services; and,

4.) counseling services designed to facilitate the transition from school to post-school employment and career opportunties."

Under Part B of Title II, the ways in which state and local education agencies (and other eligible recipients) can spend the remaining 43 % of the Federal vocational education monies is described. Basically, the funds can go for improved or new programs. There is one interesting subsection in Part B which states, "each state shall use grants for the provision of preservice and inservice training designed to increase the competence of vocational education teachers, counselors and administrators, including special emphasis on the integration of handicapped and disadvantaged students in regular cources of vocational education."

Title III, "Special Programs" contains five parts (A, B, C, D & E). Part A describes "State Assistance for Vocational Education Support Programs by Community Based Organizations." Part B establishes "Consumer and Homemaker Education" programs. Part C addresses "Adult Training, Retraining and Employment Development." Part D describes "Comprehensive Career Guidance and Counseling Programs." And, lastly, Part E reviews "Industry-Education Partnerships for Training in High-Technology Occupations."

Under Part A of Title III, a community based organization (see definition above) can make an application to the state board of vocational education for funds to conduct a vocational education program. Cooperation with the local education agency must be demonstrated. Such programs must conform to the basic mandates of the state plan which include assurance that handicapped individuals are being served. Some of the types of programs that can be funded included:

"1.) outreach programs to facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment or other education and training;

2.) transitional services such as attitudinal and motivational prevocational training programs;

3.) prevocational education proparation and basic skills development conducted in cooperation with business concerns;

4.) special prevocational preparation targeted for inner city youth non-English speaking youth, Appalachian youth and the youth of other urban and rural areas having a high density of poverty who need special prevocational educational programs;

5.) career intern programs;

6.) assessment of student needs in relation to vocational education and jobs; and,

7.) guidance counseling."

Under Part B of Title III, support for consumer and homemaker education programs are described. Grants under this section can be used to, "encourage participation of traditionally underserved populations." And, "to develop and improve instruction and curricula relative to... assisting aged and handicapped individuals..."

Under Part C of Title III, special adult programs in vocational education are established. It is the purpose of this part "to provide financial assistance to the states to enable them to expand and improve vocational education programs designed to meet the needs for training, retraining and employment development of adults who have completed or left high school and are preparing to enter or who have entered the labor market, in order to equip adults with the compentencies and skills required for productive employment, and to ensure that such programs are relevant to the labor market's needs and accessible to all segments of the population, including women, minorities, the handicapped..." Funds can be expended for programs "that provide recruitment, job search assistance, counseling, remedial services, informational and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs, with particular attention to reaching... the handicapped. ." Finally, Part C requires coordination with programs funded under the Rehabilitation Act and the Education of the Handicapped Act.

Under Part D of Title III, grants are made to assist states in conducting career guidance and counseling programs. Section 332 of Part D states, "programs of career guidance and counseling under this part shall encourage the elimination of sex, age, handicapping condition and race bias stereotyping... and be accessible to all segments of the population, including women, minorities, the handicapped and the economically disadvantaged." Finally, a requirement that "not less than 20% of the sums made available to a state under this part shall be used for programs designed to eliminate sex, age and race bias... and for activities to ensure that programs under this part are accessible to all segments of the population, including women, the disadvantaged, the handicapped..."

Under Part E of Title III, similar assurances for accessibility to handicapped individuals are specifically cited in these special programs designed to stimulate vocational education instruction in high-technology occupations.

Title IV, "National Programs," contains six parts (A, B, C, D, E, and F). Part A describes "Research" programs. Part B establishes "Demonstration Projects." Part C authorizes the "Vocational Education and Occupational Information Data Syste Part D authorizes the "National Council on Vocational Education." Part E covers "Bilingual Vocational Training." And, Part F contains "General Provisions."

Under Part A of Title IV, the principle objective for research programs under this part is "to authorize research which contributes to improving the access to vocational education programs of individuals who are disavantaged, who are handicapped, women entering nontraditional occupation, adults who are in need of retraining, individuals who are single parents, individuals with limited English proficiency and individuals who are incarcerated." Such research shall include "effective methods for providing quality vocational education to handicapped individuals..."

Under Part B of Title IV, demonstration grants will be awarded to state and local education agencies and other public and private agencies and organizations which support "model programs providing improved access to quality vocational education programs for handicapped individuals, disadvantaged individuals, etc."

The remaining Titles cover the National Advisory Council, the Vocational Education Information Data System, the National and the State Occupational Information Coordinating Committees. Each with requirements that they pay special attention to the needs of handicapped individuals.

Finally, Title V sets forth "General Provision", including a definition of terms, maintenance of effort, audits and more.

ATTACHMENT E

Synopsis of Section 1619(a) and (b) of the Social Security Disability Amendments

INTRODUCTION

On September 19, 1984, Congress passed the Social Security Disability Reform Act (P.L. 98-460). Among other provisions, this Act extends Section 1619(a) and (b) of the Social Security Disability Amendments of 1980 (P.L. 96-265), a provision which is of great importance to SSI disability recipients who wish to work. The provision is explained below.

EXPLANATION

Prior to 1981 an individual could qualify for Supplemental Security Income (SSI) only if and for so long as the recipient "is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." If a recipient earned more than $300 a month (SGA) the individual could not become eligible for SSI or, if already a recipient, would cease to be eligible.

The Social Security Disability Amendments of 1980 (P.L. 96-265) included a provision, Section 1619(a) and (b), which provided for a demonstration program that allows an SSI disability recipient to retain SSI benefits and Medicaid eligibility while earning above the SGA level.

The purpose of Section 1619(a) is to protect and continue the SSI benefits portion of the total income of that disabled recipient whose work earnings would normally cancel out basic SSI benefits, even though he or she remains severely impaired. Without this protection, a recipient would lose benefits the month after the second month of earning at the SGA level. Instead, 1619(a) continues the SSI benefits as an incentive for the recipient to continue working. Benefits are paid on the basis of a formula until earnings reach $713 per month for an eligible individual and $1,029 per month for an eligible couple, (1984 levels). At that point, all SSI benefits cease.

The purpose of Section 1619(b) is to assure that working SSI recipients continue to have Medicaid coverage if (1) their disabling condition continues; (2) they would have difficulty maintaining their employment without medical coverage; and (3) their earnings are not high enough to obtain benefits equivalent to the SSI benefits (including the State supplement) and the Medicaid benefits that they would have received had they not accepted employment.

Among SSI beneficiaries who return to work, about 5 times as many continue to receive Medicaid benefits as continue to receive SSI cash benefits under the provision.

The original passage of Section 1619 was for three years. It was renewed through June 1987 under the Social Security Disability Reform Act (P.L. 98-460).

SUGGESTIONS FOR ACTION

Section 1619 has not been utilized to the extent hoped by Congress and by advocacy organizations. You promote its use by informing clients about the provisions of Section 1619 and utilizing the program in placing severely disabled persons into supported or competitive employment. You can also work with local Social Security offices to see that SSA personnel are fully informed about Section 1619 and that clients are being informed of the program and how to use it.

For further information, contact your local Social Security Office.

List of Suggested Documents
for Review and Evaluation

I. State Plans

- Vocational Rehabilitation; Special Education; Vocational Education; Job Training Plans: State and Local; and Social Services/Human Services Plans: State and Local.

II. Operating Manuals (for Counselors, Case Managers, Office Managers)

- Vocational Rehabilitation, Mental Retardation-Developmental Disabilities

III. Policy Statements and Directives

- Vocational Rehabilitation, Mental Retardation-Developmental Disabilities

IV. Statewide Studies and Evaluations

- Vocational Rehabilitation (mandated), Mental Retardation-Developmental Disabilities, Special Education, Vocational Education

V. Budget Information for Total Operating Budget, Case Services, Special Projects

- Current Year, Prior Year, and Proposed
- Vocational Rehabilitation, Private Industry Councils, Rehabilitation Facilities/Sheltered Workshops
- United Way, other private community agencies funding services

VI. Cooperative Agreements (mandated by federal statute and not mandated)

- Interagency: Vocational Rehabilitation/Special Education, Special Education/Vocational Education, Mental Retardation-Developmental Disabilities/Vocational Rehabilitation, Mental Retardation-Developmental Disabilities/Special Education, Vocational Rehabilitation/State Job Training Coordinating Council or State Department of Labor
- Perpetual or specific project

VII. Contractual Agreements (annual and/or perpetual)

- Between Vocational Rehabilitation and Rehabilitation Facilities/Sheltered Workshops, Mental Retardation-Developmental Disabilities and Rehabilitation Facilities/Sheltered Workshops, Vocational Rehabilitation and vendors
- Fee schedules and payment schedules

VIII. Annual Reports to Federal agency(ies) and to State Legislatures

- all "appropriate, involved" state agencies
  - include Governor's Commission on the Disabled

IX. Reports on Activities

  - Client Assistance Program
  - Discretionary grants (federal, state, local) directed toward job training and placement -- review objectives, target population description, outcome measures

X. Goals, Priorities, and Plans

  - Consumer groups representing persons with developmental disabilities

XI. Title XIX Community Care Waiver Program Proposals - by state departments, divisions or specific target group, e.g., mentally retarded persons

Laws, Regulations, Guidelines for Review

I. Rehabilitation Act: P.L. 93-112 as amended by P.L. 95-602, P.L. 98-221, Regulations: 34 CFR, Part 361

II. Education of Handicapped Children Act: P.L. 94-142 as amended by P.L. 98-199; Regulations 34 CFR, Part 300

III. Vocational Education Act: P.L. 90-576 as amended by P.L. 98-524

IV. Job Training Partnership Act: P.L. 97-300

V. Social Security Act:
  Title XX Social Services Block Grant
  Title XIX Medicaid: Home and Community Care Waiver Provisions
  Title XVI, Section 1619 (a) and (b) of the 1981 amendments

State Vocational Rehabilitation Agency

Documents Available for Review

- The Rehabilitation Act of 1973, P.L. 93-112 with Amendments: P.L. 95-602
- Code of Federal Regulations: 34 CFR, Part 361 -- The Basic State Vocational Rehabilitation Services Program
- The State Plan for Vocational Rehabilitation Services under Title I of the Rehabilitation Act of 1973 as amended (a three year plan)

These should be available from the State VR agency.

Other critical documents which may or may not be available for State Council review and evaluation:

- State VR Manual for Case Managers and Counselors
- Various policy statements and directives which modify, define or clarify policies and procedures. These are critical to evaluating practices of the VR counselors.

Attachment G

Summary of

Targeted Jobs Tax Credit Program

Federal legislation provides employers with the opportunity to claim Federal income tax credits for eligible individuals they plan to hire. Obtaining these tax credits is simple. Employers have absolute hiring authority and there are no training requirements, no reporting requirements, and minimal paperwork. The TJTC program was extended and revised in The Tax Reform Act of 1984 and merged with other programs as a new "general business credit" program. Department of Treasury Internal Revenue Service Publication 906 (revised November 1984) provides instructions for employers in preparing IRS Form 5884, Jobs Credit. Some states including California, have enacted State laws which provide for a State TJTC program, i.e., credits on State income tax for employers.

The following is a brief description of the Targeted Jobs Tax Credit Program:

Amount: The tax credit is 50 percent of the qualified first-year wages up to $6,000 and 25 percent of the qualified second-year wages up to $6,000 for each eligible employee. This provides up to $4,500 in Federal tax credits for each eligible employee.

Targeted Groups: A person is a member of a targeted group if the person meets the requirements for any of the groups listed below. Members of targeted groups are persons who are:

1) vocational rehabilitation referrals,
2) economically disadvantaged youths,
3) economically disadvantaged Vietnam-era veterans,
4) Supplemental Security Income (SSI) recipients,
5) General Assistance recipients,
6) youths participating in a cooperative education program
7) economically disadvantaged ex-convicts,
8) involuntarily terminated Comprehensive Employment and Training Act (CETA) employees who started work for the employer after August 13, 1981, and before January 1, 1983,
9) eligible work incentive employees, or
10) qualified summer youth employees

Certification: In order for an employer to claim tax credit on wages paid to a (newly-hired) employee, that employee must be certified as a member of a targeted group by the designated local agency (generally the local office of State Employment Services Agency). In some states this certification authority is delegated to the State Rehabilitation Agency (for certification of persons with disabilities).

The employer must have received the certification or requested it in writing no later than the employee's first workday. Note that procedures may vary from State to State in regard to certification. Also, for employees starting work after July 18, 1984, the employer has the first five working days to receive or request certification if the employee has received from the designated local (certifying) agency a written preliminary determination that he or she is a member of a targeted group.

Vocational Rehabilitation Referral: A VR referral is any certified employee who:

1) Has a physical or mental disability that either is a substantial handicap or that results in a substantial handicap to employment, and

2) Is referred to a prospective employer upon completing or while receiving rehabilitative services under:

   a) An individualized written rehabilitation plan under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

   b) A program of vocational rehabilitation for veterans carried out under Chapter 31 of Title 38, United States Code.

Note that a person with a developmental disability may not be a client of the State VR Agency but may qualify as a member of a targeted group under other specific listings, e.g., SSI recipients or disadvantaged youth. However, referral through a State VR Agency may be the most expeditious process.

Restrictions and Limitations: Agencies and organizations interested in the TJTC Program as a means for expanding competitive job placement should review Publication 906, Jobs and Research Credit. Prospective employers also should be provided with the information contained in the publication.